Mr Justice Catron

SUPREME COURT OF THE UNITED STATES.

No. ~~208~~. 214. 115

JACOB KOCHLER, DANIEL KOCHLER, AND HENRY PFIFFNER, APPELLANTS,

v.

BLACK RIVER FALLS IRON COMPANY, WILLIAM M. HUBBY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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SUPREME COURT OF THE UNITED STATES.

No. 298.

JACOB KOCHLER, DANIEL KOCHLER, AND HENRY PFIFFNER, APPELLANTS,

v.

THE BLACK RIVER FALLS IRON COMPANY, WILLIAM M. HUBBY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Bill of Complaint,	2	3
Subpœna,	7	6
" Return and Rule to Plead,	8	7
Order of Court,	9	8
Petitions to be made Parties Defendants,	10	9
Answer of Hubby,	16	10
" Black River Falls Co,	20	15
" Defendants,	23	17
Replication to Answer of Hubby,	28	20
" " Company,	29	21
" " Defendants,	30	22
Stipulation as to Testimony,	31	22
Order allowing Amendments to Bill,	32	23
Amendment,	33	23
Hearing and Motion to support Testimony,	33	24
Complainant's Testimony, Note and Mortgage,	35	25

	Original.	Print.
Deposition of Levy,	45	31
" Fisher,	51	34
Exhibit A.,	58	40
Defendant's Testimony, Note and Mortgage,	59	40
Deposition of R. C. Bryan,	66	45
" Henry Richter,	68	46
" Charles Hauser,	72	48
" J. M. Levy,	75	49
Exhibit "A.,"	77	51
Pages 29, 30 of Book, referred to in Deposition as Exhibit "B.,"	82	54
" 31, 32 " " " " "	84	56
" 33, 34 " " " " "	87	57
Exhibit "C.,"	89	58
Decree and Appeal,	94	62
" allowed, &c.,	95	63
" Bond and Order for Citation,	96	63
" " " "	99	64
Certificate,	98	65
Citation and Service,	99	65

District Court of the United States of America for the District of Wisconsin.

United States of America, District of Wisconsin, *ss.*

At a special term of the District Court of the United States of America, for the District of Wisconsin, begun and held according to law, at the city of Milwaukee, in said District of Wisconsin, on the first Monday (being the first day), of October, A.D. 1860.

Present, the Honorable Andrew G. Miller, judge of said court, presiding; John H. Lewis, marshal; John M. Miller, clerk.

Among other, the following proceedings were had, to wit:

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER,
v.
BLACK RIVER FALLS IRON COMPANY, WILLIAM M. HUBBY, F. KARCHER, C. RITTER, H. JANISCH, F. HAUSER, K. SEEL, FR. MUELLER, F. L. KOENIG, S. SCHUMACHER, G. VOGT, J. W. JACOB, and JULIUS W. HAAS. } In Equity.

Be it remembered, that heretofore, to wit, on the seventeenth day of December, A. D. 1859, came Jacob Koehler, Daniel Koehler, and Henry Pfiffner, by their solicitor, Mr. Lakin, and filed their bill of complaint against the Black River Falls Iron Company, as follows:

Bill of Complaint.

To the Judge of the District Court of the United States, for the District of Wisconsin.

Jacob Koehler, Daniel Koehler, and Henry Pfiffner, of the city of Galena, Jo Daviess county, State of Illinois, and who are citizens of the State of Illinois, bring this their bill against the "Black River Falls Iron Company, which is a corporation created by and under the laws of the State of Wisconsin, and doing business in Jackson county, in said State of Wisconsin.

And thereupon your orators complain and say, that on or about the thirteenth day of August, one thousand eight hundred and fifty-eight, at La Crosse, the said "Black River Falls Iron Company" made their certain promissory note in writing, whereby for value

received said Black River Falls Iron Company promised to pay, nine months after the date thereof, to the order of Daniel Koehler and Casper Bircher, the sum of fifteen thousand dollars, and twelve per cent. interest thereon per annum, and then and there delivered said promissory note to said Daniel Koehler and Casper Bircher, who are citizens of the State of Illinois.

And the said "Black River Falls Iron Company," to secure the payment of the said sum mentioned in said note, did at the same time execute under its corporate seal, and deliver to said Daniel Koehler and Casper Bircher, a mortgage, bearing the same date with the said note, by which the said "Black River Falls Iron Company" did grant, bargain, and sell unto the said Daniel Koehler and Casper Bircher, and to their heirs and assigns, forever, all "the following described premises and real estate lying and being in the county of Jackson and State of Wisconsin, to wit:

The southwest quarter of the northeast quarter of section number nine (9), in township number nineteen (19), north of range number six (6) west; and the northwest quarter of section number twelve (12), in township number twenty-one (21), north of range number four (4) west; and the northwest quarter of the southeast quarter of section number eleven (11), in township number twenty-one (21), north of range number four (4) west; and the south half of the northeast quarter of section number eleven (11), in township number twenty-one (21) north, of range number four (4) west; and the southeast quarter of section twenty-eight (28), in township twenty-two (22) north, of range four (4) west; and the west half of the southwest quarter, and the southeast quarter of the southwest quarter of section number twenty-eight (28), in township number twenty-two (22) north, of range number four (4) west; and the east half of the northeast quarter, and the northwest quarter of northeast quarter of section number thirty-three (33), in township number twenty-two (22) north, of range number four (4) west; and the east half of the northwest quarter, and the southwest quarter of the northeast quarter of section number thirty-three (33), in township number twenty-two (22) north, of range number four (4) west; and the east half of the northwest quarter of section number thirty-four (34), in township twenty-two (22) north, of range number four (4) west; and the west half of the northwest quarter of section number thirty-five (35), in township number twenty-two (22) north, of range number four (4) west; together with all and singular the hereditaments and appurtenances thereunto belonging and in anywise appertaining, and also all the right, title, estate, claim, interest, or demand, whatsoever, of the said "Black River Falls Iron Company," either in law or equity; excepting, however, all those lots in New Danemara, which had been either sold or contracted to be sold by the said "Black River Falls Iron Company," which mortgage was duly witnessed and acknowledged, so as to entitle it to be recorded, and the

same was afterwards duly recorded as a mortgage, in the office of the register of deeds, in the county of Jackson, in the State of Wisconsin, in vol. two (2), of Mortgages, on pages 61, 62, and 63, on the 14th day of August, A.D. 1858, at 3 o'clock in the afternoon, as in and by said mortgage, and the certificates of acknowledgment, and of the recording aforesaid, indorsed thereon, and now ready to be produced as this court shall direct, will more fully appear; and your orators further show, that by the terms of said mortgage, said "Black River Falls Iron Company" was to pay all taxes and assessments of every nature, that may or might be assessed on said premises previous to the day appointed in pursuance of any law of this State for the sale of lands for taxes; and also the sum of fifty dollars, solicitors' fees, in case of foreclosure of said mortgage, by reason of the non-performance of any conditions thereof by said "Black River Falls Iron Company."

And your orators further show, that afterwards, to wit, on the 21st day of September, A.D. 1858, the said Casper Bircher, by his instrument of writing under seal, in consideration of seven thousand dollars, paid by Jacob Koehler and Henry Pfiffner aforesaid, did transfer, assign, and set over, to said Jacob Koehler and Henry Pfiffner, all of his, said Casper Bircher's, right, title, and interest, in and to said note and mortgage, and the premises therein described, which said assignment was duly witnessed, acknowledged, and recorded in the office of the register of deeds of Jackson County, Wisconsin, on the 29th day of January, A.D. 1859, at 2 o'clock P.M., in vol. 2 of Mortgages, on page 140.

And your orators further show, that the sum of fifteen thousand dollars, the amount secured by the said note and mortgage, together with the interest on that sum from the 13th day of August, A.D. 1858, still remains due and unpaid to your orators, and that no proceedings at law have been had to recover the debt secured by said note and mortgage, or any part thereof; by reason whereof, the estate of your orators in the said mortgaged premises hath become and is absolute, in law, subject only to the equity of redemption in this court.

And your orators further show, that said "Black River Falls Iron Company," or those claiming under it, has, from the time of making and executing said mortgage, possessed and enjoyed, and still does possess and enjoy, all and singular the said mortgaged premises, and has at all times received, and still do receive, the rents, issues, and profits thereof.

Your orators therefore solicit the aid of this honorable court to compel said defendant true, full, and perfect answer to make to all and singular the statements and charges above set forth; but without oath (an answer under oath being hereby waived).

And that said Black River Falls Iron Company may be decreed to pay to said complainants, your orators, said principal sum of

money above mentioned, with the arrears of interest now due or hereafter to become due and payable thereon, together with fifty dollars, solicitor's fees, and the costs and charges in this behalf expended, by a day to be appointed by this court, and in default thereof, that the said Black River Falls Iron Company, and all persons claiming and to claim under them; or it may be foreclosed of and from all equity of redemption, and claim of, in and to said mortgaged premises, and every part thereof, with the appurtenances, and may deliver over to your orators all deed, demises, and writings, relating to or concerning the same; and that all and singular said mortgaged premises, with the appurtenances, may be sold under the decree of this court, and that out of the money arising from the sale thereof, your orators may be paid the principal sum due on said note and mortgage, and all interest-money due and to become due thereon, together with fifty dollars, solicitor's fees, and all costs and charges by them in this behalf sustained; or that your orators may have such other or further relief in the premises as may seem proper, and shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orators a writ of subpœna, to be issued under the seal of this court, directed to said "Black River Falls Iron Company," therein and thereby commanding the same, on a certain day, and under a certain penalty, to be and appear before this honorable court, then and there to answer this bill of complaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience.

JACOB KOEHLER,
DANIEL KOEHLER, and
HENRY PFIFFNER,
By GEORGE W. LAKIN,
Their Solicitors.
GEORGE W. LAKIN,
Of Counsel.

Whereupon a subpœna issued, as follows:

United States of America, District of Wisconsin, *ss.*

[SEAL.] The President of the United States of America to Black River Falls Iron Company, greeting.

You are hereby commanded, that you personally appear before the judge of the District Court of the United States of America for the District of Wisconsin, in our Court of Chancery in and for the district aforesaid, on the first Monday of February next ensuing, at Milwaukie, to answer to a bill of complaint exhibited against you in our said court, by Jacob Koehler, Daniel Koehler, and Henry Pfiffner; and to do further, and receive what our said court shall have

considered in this behalf. And this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Black River Falls Iron Company, if to be found in his district, and due return thereof make.

Witness the Honorable Andrew G. Miller, judge of the District Court of the United States for the District of Wisconsin, at the city of Milwaukie, in the said district, this seventeenth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the eighty-fourth.

J. M. MILLER,
Clerk.
GEORGE W. LAKIN,
Solicitors.

It is ordered by our said court, that the said Black River Falls Iron Company, the defendant aforesaid, do enter its appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

And afterwards, and on or before the return day of said writ, came the said marshal, and returned the same, with his return indorsed thereon, as follows:

Return.

Served on the within-named Black River Falls Iron Company, by delivering to John M. Levy, the president of said company, personally, a copy of this subpœna, this 12th day of January, 1860.

J. H. LEWIS,
Marshal.
By M. F. HUBBARD,
Deputy.

Fees, $14 40.

And afterwards, to wit, on the first Monday of February, A.D. 1860, came the complainants, by their solicitor, and entered in the order and rule book a rule to plead, according to the rules and practice of this court, as follows:

Rule to Plead.

In Equity. Of the 1st Monday of February, A.D. 1860.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER,
v.
BLACK RIVER FALLS IRON COMPANY.

On motion of George W. Lakin, solicitor for the complainants, it is ordered that the defendant plead, answer, or demur to the complainants' bill on file, by the first Monday of March next.

GEORGE W. LAKIN,
Complainants' Solicitor.

And afterwards, to wit, at a term of said court, begun and held according to law, on the first Monday (being the second day) of January, A.D. 1860, at the city of Milwaukie; and on the twentieth day thereof, to wit, on the fifth day of March, A.D. 1860, the following proceedings were had, to wit:

Order of Court.

In Equity.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER,
v.
BLACK RIVER FALLS IRON COMPANY.

This day came F. Karcher, C. Ritter, H. Janisch, F. Hauser, K. Seel, Fr. Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob, who are aliens, and subjects of the king of Bavaria, in Germany, and Julius W. Haas, who is a citizen of the State of Iowa, and presented their petition in writing, setting forth that they are mortgagees of the property included and described in this bill, and praying the court that they be allowed to enter their appearance in this suit, and become parties defendants thereto, and that they be allowed a reasonable time to answer. On consideration whereof, it is ordered by the court, that the said several petitioners be and hereby are allowed to appear as parties defendants, and that they be allowed to the first Monday of April next to file their answer to this bill.

And came William M. Hubby, and presented his petition in writing, setting forth that he is a stockholder of the company defendant, and that he believes the directors of said company are not intending to make defence to this bill, and prays that he may be allowed to appear and defend. On consideration whereof, it is or-

dered by the court that the said William M. Hubby be and hereby is allowed to make defence to this bill the same as the said company defendant could do under the rules and practice of this court; and that he have until the first Monday of April next to file his answer.

Which said petitions of F. Karcher and others, and William M. Hubby, are as follows, to wit:

Petition of F. Karcher and others.

To the Judge of the District Court of the United States of America for the District of Wisconsin. In Equity.

The petition of Fr. Karcher, C. Ritter, H. Janisch, F. Haeuser, K. Seel, Fr. Mueller, F. L. Koenig, S. Schumacher, G. Vogt, I. W. Jacob, who are aliens and subjects of the king of Bavaria, in Germany, and Julius W. Haas, who is a citizen of the State of Iowa, respectfully shows to this court:

That on the 17th day of December, A. D. 1859, Jacob Koehler, Daniel Koehler, and Henry Pfiffner, citizens of the State of Illinois, filed in this court their bill of complaint against the Black River Falls Iron Company, a corporation created and organized under and by virtue of the laws of the State of Wisconsin, to foreclose a certain mortgage, purporting to have been executed by said company to Daniel Koehler and Caspar Bircher, on the 13th day of August, A. D. 1858, to secure an alleged indebtedness of $15,000, and interest thereon at the rate of twelve per cent. per annum, and covering the property described in said bill of complaint, which said mortgage said bill of complaint alleges to have been recorded in the office of the register of deeds of Jackson County, in the State of Wisconsin, on the 14th day of August, A. D. 1858, in volume 2 of Mortgages, on pages 61, 62, and 63.

And your petitioners further show that they are the owners and holders of a note and mortgage, executed by the said Black River Falls Iron Company to them, on the 4th day of March, A. D. 1859, to secure to your petitioners the payment of the sum of $\$12{,}610\frac{71}{100}$ on demand, with interest at the rate of ten per cent. per annum, which said last-mentioned mortgage covers the same property included in the mortgage first above described, and was duly witnessed and acknowledged, and afterwards, and on the same 4th day of March, A. D. 1859, was recorded in the office of the register of deeds of said Jackson County, in volume 2 of Mortgages, on pages 159, 160, and 161; and that the said note and mortgage have never been paid to your petitioners, nor any part thereof.

And your petitioners further show, upon information and belief, that the said mortgage first above described is wholly void as to your petitioners, and that your petitioners have a legal and equitable defence against the enforcement of the same, and are desirous

of interposing that defence in the suit commenced as aforesaid for the foreclosure of said mortgage first above described.

Wherefore your petitioners pray that they may be allowed to enter their appearance in said suit, and become parties defendants thereto, and may be allowed a reasonable time within which to file their answer to said bill of complaint.

And your petitioners will ever pray, &c.

FR. KARCHER,
C. RITTER,
H. JANISCH,
F. HAEUSER,
K. SEEL,
FR. MUELLER,
F. L. KOENIG,
J. SCHUCHMACHER,
G. VOGT,
I. W. JACOB, and
JULIUS W. HAAS.

By HOOKER & SPANGENBERG,
Their Solicitors.

District of Wisconsin, *ss.*

Emil Spangenberg, of the city of Milwaukee, being duly sworn, deposes and says, that he is one of the solicitors for the petitioners in the foregoing petition named; that he has read the said petition, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters that he believes it to be true.

Deponent further says that he makes this verification for and in behalf of said petitioners, for the reason that neither of them are at this time within this State to deponent's knowledge.

Sworn to before me this 5th day of March, A. D. 1860.

I. M. MILLER,
Clerk, &c.

Petition of W. M. Hubby.

U. S. District Court of Wisconsin.

JACOB KOEHLER and others
v.
THE BLACK RIVER FALLS IRON COMPANY.

The petition of William M. Hubby respectfully represents, that he is the owner of three shares of the stock of the Black River Falls Iron Company; that he has reason to believe, and does believe, that

there is a good defence to a large portion of the amount claimed by the complainants to be owing on the note and mortgage described in the complainants' bill of complaint; that the amount secured by the said note and mortgage, as your petitioner is informed and believes, is more than double the consideration received by the said company for the said mortgage, and that the contract is usurious; that your petitioner is informed and believes that the complainants and the officers of said company, or a portion thereof, have combined for the purpose of foreclosing the said mortgage for the full amount thereof, and thereby cheat and defraud the stockholders and the creditors of said company; that a large portion of the stockholders of the said company are foreigners, and unacquainted with the English language, and the judgment creditors of said company are mostly foreigners and residents in Europe. Your petitioner further shows that he has caused a notice to be served on the president of said company, requesting the said company to defend the action, and that this petition would be filed on the first Monday of March, 1860, proof of which is hereunto annexed, marked "A." Your petitioner therefore prays that he may be allowed to appear and defend said action, and that he have until the first Monday of April to file his answer.

WILLIAM M. HUBBY.
FINCHES, LYNDE & MILLER,
Solicitors for Wm. M. Hubby.
JAMES H. KNOWLTON,
Of Counsel.

District of Wisconsin, *ss.*

William M. Hubby sworn to the truth of the foregoing petition before me, this 5th day of March, A.D. 1860.

J. M. MILLER,
Clerk, &c.

United States District Court, Wis. In Equity.

JACOB KOEHLER, DAVID KOEHLER, HENRY PFIFFNER, NATHERSON CORWITH, and JOHN E. CORWITH,
v.
THE BLACK RIVER FALLS IRON COMPANY, FR. RAUCHER, C. RITTER, H. JAERISCH, L. HAWSER, K. SEEL, F. R. MUELLER, F. L. SHAENING, J. SCHUMACHER, G. VOGT, J. W. JACOB, JULIUS W. HAAS, MECHEAL FOWLER, MICHAEL HELD, JOSEPH CORNELIUS KELLY, WILLIAM SULLIVAN, L. FRANKET, F. FRANKET, M. LAWLER, ULICH ODERBATTY.

To the Black River Falls Iron Company.

You are requested to defend the above entitled cause. If the

company neglects so to defend by the first Monday of March next, I will make an application to the District Court of the United States for the District of Wisconsin for permission to defend said cause.

WILLIAM M. HUBBY.
FINCHES, LYNDE & MILLER,
Solicitors for Wm. M. Hubby.
JAMES H. KNOWLTON,
Of Counsel.

State of Wisconsin, County of La Crosse, *ss.*

M. F. Hubbard, being duly sworn, on oath says, that he is deputy U. S. marshal for the District of Wisconsin, and that on the 21st day of February, A.D. 1860, at the city of La Crosse and county of La Crosse and State of Wisconsin, he served the within and annexed notice on the within-named Black River Falls Iron Company, by delivering to and leaving with John M. Levy, president of the said company, a copy of said notice.

M. F. HUBBARD,
Deputy U. S. Marshal.

Sworn to before me this 23d day of February, A.D. 1860.
[L. S.] HORACE B. LOOMIS,
Notary Public, La Crosse, La Crosse co., Wis.

And afterwards, to wit, on the second day of April, A.D. 1860, came William M. Hubby, by his solicitors Messrs. Finches, Lynde & Miller, and filed his answer as follows:

Answer of W. M. Hubby.

United States District Court, District of Wisconsin. In Equity.

The separate answer of William M. Hubby to the bill of complaint of Jacob Koehler, Daniel Koehler, and Henry Pfiffner.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering says:

He denies, on information and belief, that the said defendant, the "Black River Falls Iron Company," ever executed the promissory

note in said bill of complaint described and set forth, or that it ever delivered such promissory note to the said Daniel Koehler and Casper Bircher, or either of them.

And this defendant further answering denies, on information and belief, that the said "Black River Falls Iron Company" ever executed, under its corporate seal or otherwise, or ever delivered to the Daniel Koehler and Casper Bircher, or either of them, the mortgage in said bill of complaint described and set forth, or any other mortgage, to secure the payment of the sum mentioned in said promissory note, or to secure the payment of any sum whatever to the said Daniel Koehler and Casper Bircher, or either of them.

And this defendant further answering denies, on information and belief, that the mortgage set forth in said bill of complaint was ever recorded in the office of the register of deeds for Jackson county, as is in said bill of complaint alleged.

And this defendant further answering says, that as to whether the said Caspar Bircher ever assigned to the said complainants, Jacob Koehler and Henry Pfiffner, for the consideration of seven thousand dollars, or for any other consideration, his pretended right, title, or interest in the said note or mortgage, as is in said bill of complaint alleged, this defendant has no knowledge or information, and therefore leaves the said complainants to their proofs thereof.

And this defendant further answering denies, on information and belief, that the sum of fifteen thousand dollars, the amount pretended to be secured by the said note and mortgage, together with interest, or that any sum whatever is due, and unpaid to the said complainants, as is in said bill of complaint alleged.

And this defendant further answering says, that he has been informed, and believes the same to be true, that on or about the *the* said thirteenth day of August, A. D. 1858, two instruments in writing, purporting to be the note and mortgage of the said "Black River Falls Iron Company," and purporting to secure to the said Daniel Koehler and Caspar Bircher the payment to them of the sum of fifteen thousand dollars, and interest at the rate of twelve per cent. per annum, in nine months after the date thereof, and each bearing date on the day and year last aforesaid, came into the possession of the said Daniel Koehler and Caspar Bircher, and which are the same note and mortgage in the said bill of complaint described and set forth; but these defendants say, on information and belief, that neither the said note nor the said mortgage were executed by the said "Black River Falls Iron Company," or by or under its authority.

And this defendant further answering says, on information and belief, that at the time of the pretended execution of the said note and mortgage, the said "Black River Falls Iron Company" was not indebted to the said Daniel Koehler and Caspar Bircher, or

to either of them, in the said sum of fifteen thousand dollars, or in any sum whatever, neither did the said Daniel Koehler and Caspar Bircher, or either of them, pay to the said "Black River Falls Iron Company," at that time or at any other time, the sum of fifteen thousand dollars, or any sum whatever, for or in consideration of the said pretended note and mortgage, and that the said pretended note and mortgage were wholly without consideration, and for that reason absolutely void.

And these defendants further answering say, on information and belief, that at the time of the said pretended assignment to them by the said Caspar Bircher, they, the said Jacob Koehler and Daniel Pfiffner, well knew that the said pretended note and mortgage were never executed by the said "Black River Falls Iron Company," or by, or under its authority; and also well knew that the same were wholly without consideration, and were absolutely void.

And this defendant further answering says, that the said pretended note and mortgage mentioned and described in the said bill of complaint, were obtained from the directors of the said "Black River Falls Iron Company" by fraud and collusion, by, with, and on the part of the said directors; that the said directors fraudulently and collusively, and without any consideration, and without any authority from the said "Black River Falls Iron Company," and without any authority of law, made the said pretended note and mortgage to the said Daniel Koehler and Caspar Bircher for the purpose of creating an apparent incumbrance upon the property of the said "Black River Falls Iron Company," and for the purpose of cheating and defrauding the said "Black River Falls Iron Company" of said property, and for the purpose, and with the intent, of hindering, delaying, and defrauding the creditors of the said "Black River Falls Iron Company" of their lawful actions, debts, and demands, against it, the said "Black River Falls Iron Company."

And this defendant further answering says, that the said complainants, Jacob Koehler and Henry Pfiffner, were, at the time of the pretended execution of the said pretended note and mortgage in the said bill of complaint, directors of the said "Black River Falls Iron Company," and contrived, instituted, and participated in such fraud and collusion.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as far as this honorable court shall direct.

WILLIAM HUBBY.

FINCHES, LYNDE & MILLER,
Sols. for Wm. M. Hubby.

WM. P. LYNDE,
Of Counsel.

And same day (April 2d, 1860), came the defendant, Black River Falls Iron Company, by its solicitors, Messrs. Hooker & Spangenberg, and filed its answer, as follows:

Answer of Black River Falls Iron Company.

U. S. District Court, District of Wisconsin. In Equity.

The separate answer of the Black River Falls Iron Company, one of the defendants to the bill of complaint of Jacob Koehler, Daniel Koehler, and Henry Pfiffner, complainants.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof, as this defendant is advised is or are material or necessary for it to make answer unto, this defendant answering, saith:

It denies that it ever executed the promissory note in said bill of complaint described and set forth, or that it ever delivered such promissory note to the said Daniel Koehler and Caspar Bircher.

And this defendant further denies that it ever executed under its corporate seal, or delivered to the said Daniel Koehler and Caspar Bircher, the mortgage in said bill of complaint described, or any other mortgage, to secure the payment of the sum mentioned in said promissory note, or to secure the payment of any sum whatever.

And this defendant further denies, that the mortgage set forth in said bill of complaint was ever recorded in the office of the register of deeds for Jackson county, as in said bill alleged.

And this defendant further answering says, that as to whether the said Caspar Bircher ever assigned to the said complainants, Jacob Koehler and Henry Pfiffner, for the consideration of seven thousand dollars, or for any other consideration, his pretended right, title, or interest in the said note or mortgage, as in said bill of complaint alleged, this defendant has no knowledge or information, and therefore leaves the said complainants to their proofs thereof.

And this defendant further denies, that the sum of fifteen thousand dollars, the amount purported to be secured by the said note and mortgage, together with interest, or that any sum whatever, is due and unpaid to the said complainants, as in said bill alleged.

And this defendant further answering says, that it has been informed and believes the same to be true, that on or about the said thirteenth day of August, 1858, two instruments in writing, purporting to be the note and mortgage of this defendant, and purporting to secure to the said Daniel Koehler and Caspar Bircher the pay-

ment to them of the sum of fifteen thousand dollars, and interest at the rate of twelve per cent. per annum, in nine months after the date thereof, and each dated on the day and year last aforesaid, came into the possession of the said Koehler and Bircher, and which are the same note and mortgage in said bill of complaint described, but this defendant says that neither the said note nor the said mortgage were ever executed by this defendant, or under its authority.

And this defendant further answering says, that at the time of the pretended execution of the said note and mortgage, this defendant was not indebted to the said Daniel Koehler and Caspar Bircher, or to either of them, in the said sum of fifteen thousand dollars, or in any sum whatever; neither that the said Koehler and Bircher, or either of them, pay to this defendant at that time, or at any other time, the sum of fifteen thousand dollars, or any sum whatever; and that the said pretended note and mortgage were wholly without consideration, and for that reason absolutely void.

And this defendant further answering says, that at the time of the said pretended assignment to them by the said Caspar Bircher, they, said Jacob Koehler and Daniel Pfiffner, well knew that neither the said note nor the said mortgage were ever executed by this defendant, or by its authority, and also well knew that the same were wholly without consideration, and were absolutely void.

Without that any other matter or thing material, or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct; and humbly pray to be hence dismissed, with its reasonable costs and charges, in that behalf most wrongfully sustained.

BLACK RIVER FALLS IRON COMPANY,
By HOOKER & SPANGENBERG,
Its Solicitors.

HOOKER & SPANGENBERG,
Solicitors for Defendants.

CARY & PRATT,
Of Counsel.

And same day (April 2, 1860) came the defendants, Frederick Karcher, C. Ritter, H. Janisch, F. Hawser, K. Seel, Frederick Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob and Julius W. Haas, by their solicitors, Messrs. Hooker and Spangenberg, and filed their answer, as follows:

B241

Answer of F. Karcher and others.

United States District Court, District of Wisconsin. In Equity.

The joint and several answer of the defendants, Frederick Karcher, C. Ritter, H. Janisch, F. Hawser, Ke. Seel, Frederick Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob, and Julius W. Haas, to the bill of complaint of Jacob Koehler, Daniel Koehler, and Henry Pfiffner.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants answering, say:

They deny, on information and belief, that the said defendant, the "Black River Falls Iron Company," ever executed the promissory note in said bill of complaint described and set forth, or that it ever delivered such promissory note to the said Daniel Koehler and Caspar Bircher, or either of them.

And these defendants further answering deny, on information and belief, that the said "Black River Falls Iron Company" ever executed, under its corporate seal or otherwise, or ever delivered to the said Daniel Koehler and Caspar Bircher, or either of them, the mortgage in said bill of complaint described and set forth, or any other mortgage, to secure the payment of the sum mentioned in said promissory note, or to secure the payment of any sum whatever to the said Daniel Koehler and Caspar Bircher, or either of them.

And these defendants further answering deny, on information and belief, that the mortgage set forth in said bill of complaint, was ever recorded in the office of the register of deeds for Jackson county, as is in said bill of complaint alleged.

And these defendants further answering say, that as to whether the said Caspar Bircher ever assigned to the said complainants, Jacob Koehler and Henry Pfiffner, for the consideration of seven thousand dollars, or for any other consideration, his pretended right, title, or interest in the said note or mortgage, as is in said bill of complaint alleged, these defendants have no knowledge or information, and therefore leave the said complainants to their proofs thereof.

And these defendants further answering deny, on information and belief, that the sum of fifteen thousand dollars, the amount pretended to be secured by the said note and mortgage, together with interest, or that any sum whatever, is due and unpaid to the said complainants, as in said bill of complaint alleged.

And these defendants further answering, say that they have been informed, and believe the same to be true, that on or about the said

thirteenth day of August, A.D. 1858, two instruments in writing, purporting to be the note and mortgage of the said "Black River Falls Iron Company," and purporting to secure to the said Daniel Koehler and Caspar Bircher, the payment to them of the sum of fifteen thousand dollars and interest, at the rate of twelve per cent. per annum, in nine months after the date thereof, and each bearing date on the day and year last aforesaid, came into the possession of the said Daniel Koehler and Caspar Bircher, and which are the same note and mortgage in the said bill of complaint described and set forth, but these defendants say, on information and belief, that neither the said note nor the said mortgage were executed by the said "Black River Falls Iron Company," or by or under its authority.

And these defendants further answering say, on information and belief, that at the time of the pretended execution of the said note and mortgage, the said "Black River Falls Iron Company" was not indebted to the said Daniel Koehler and Caspar Bircher, or to either of them, in the said sum of fifteen thousand dollars, or in any sum whatever, neither did the said Daniel Koehler and Caspar Bircher, or either of them, pay to the said "Black River Falls Iron Company," at that time, or at any other time, the sum of fifteen thousand dollars, or any sum whatever, for or in consideration of the said pretended note and mortgage, and that the said pretended note and mortgage were wholly without consideration, and for that reason absolutely void.

And these defendants further answering say, on information and belief, that at the time of the said pretended assignment of them by the said Caspar Bircher, they the said Jacob Koehler and Daniel Pfiffner, well knew that the said pretended note and mortgage were never executed by the said Black River Falls Iron Company, or by or under its authority, and also well knew that the same were wholly without consideration and were absolutely void.

And these defendants further answering say, that on or about the fourth day of March, A.D. 1859, the said "Black River Falls Iron Company" was indebted to these defendants in the sum of twelve thousand six hundred and ten dollars and seventy-one cents, and that on the day last aforesaid, and for the purpose of securing the payment to these defendants, of the sum of money last above mentioned, it, the said "Black River Falls Iron Company," duly executed and delivered to these defendants its certain promissory note in writing, bearing date on that day, wherein and whereby, for value received, it promised to pay on demand to these defendants, or to their order, the said sum of twelve thousand six hundred and ten dollars and seventy-one cents, with interest thereon at the rate of ten per cent. per annum.

And these defendants further answering say, that the said "Black River Falls Iron Company," for the purpose of giving to these defendants additional security for the payment of the said sum men-

tioned in the promissory note last above mentioned, did at the same time duly execute, under its corporate seal, and deliver to these defendants, a mortgage, bearing the same date with the said last-mentioned note, by which it, the said "Black River Falls Iron Company," did grant, bargain, and sell, unto these defendants, and to their heirs and assigns, forever, the same, and the whole of the same, real estate described and set forth in the said bill of complaint, together with all and singular the hereditaments and appurtenances thereunto belonging; which said last-mentioned mortgage was duly witnessed and acknowledged, so as to entitle it to be recorded, and the same was afterwards, and on the fourth day of March, A. D. 1859, duly recorded in the office of the register of deeds of Jackson county, in the State of Wisconsin, as a mortgage, in volume two (2) of Mortgages, on pages one hundred and fifty-nine (159), one hundred and sixty (160), and one hundred and sixty-one (161), as by said mortgage and the certificates of acknowledgment, and of the recording thereof, now ready to be produced, as this court shall direct, will more fully appear.

And these defendants further answering say, that the said sum of twelve thousand six hundred and ten dollars and seventy-one cents has not been paid, nor any part thereof, and that the whole amount secured to be paid by the said last-mentioned note and mortgage, now remains due and unpaid to these defendants, and that no proceedings have been had at law or otherwise to recover the same.

And these defendants further answering, say, that the said pretended note and mortgage, mentioned and described in the said bill of complaint, were obtained from the directors of the said "Black River Falls Iron Company" by fraud and collusion, by, with, and on the part of the said directors; that the said directors, fraudulently and collusively, and without any consideration and without any authority from the said "Black River Falls Iron Company," and without any authority of law, delivered the said pretended note and mortgage to the said Daniel Koehler and Caspar Bircher, for the purpose of creating an apparent incumbrance upon the property of the said "Black River Falls Iron Company," and for the purpose of cheating and defrauding the said "Black River Falls Iron Company" of said property, and for the purpose and with the intent of hindering, delaying, and defrauding, the creditors of the "Black River Falls Iron Company" of their lawful actions, debts and demands, against it, the said "Black River Falls Iron Company."

And these defendants further answering say, that the said complainants, Jacob Koehler and Henry Pfiffner, were at the time of the pretended execution of the said pretended note and mortgage, in the said bill of complaint mentioned, directors of the said "Black River Falls Iron Company," and contrived, instituted, and participated in such fraud and collusion; without this, that any other matter or thing material or necessary for these defendants to make answer

unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants.

All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

FREDERICK KARCHER,
C. RITTER,
H. JANISCH,
F. HAWSER,
K. SEEL,
FREDERICK MUELLER,
F. L. KOENIG,
S. SCHUMACHER,
G. VOGT,
J. W. JACOB, and
JULIUS W. HAAS,

By HOOKER & SPANGENBERG,
Their Solicitors.

HOOKER & SPANGENBERG,
Sols. for Defendants.
CARY & PRATT,
Of Counsel.

And afterwards, to wit, on the twenty-seventh day of April, A.D. 1860, came the complainants, by their solicitor, and filed their replications, as follows:

Replication to Answer of Hubby.

The United States of America, District of Wisconsin.

U. S. District Court.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER, *v.* BLACK RIVER FALLS IRON COMPANY. } In Chancery.

The replication of Jacob Koehler, Daniel Koehler, and Henry Pfiffner, complainants, to the separate answer of Wm. M. Hubby, defendant.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer

of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

GEORGE W. LAKIN,
Solicitor for Complainants.

Replication to Answer of Black River Falls Iron Company.

The United States of America, District of Wisconsin.
United States District Court.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER,
v.
BLACK RIVER FALLS IRON COMPANY.
} In Chancery.

The replication of Jacob Koehler, Daniel Koehler, and Henry Pfiffner, complainants, to the answer of Black River Falls Iron Co., defendant.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

GEORGE W. LAKIN,
Solicitor for Complainants.

Replication to Answer of F. Karcher and others.

The United States of America, District of Wisconsin.
United States District Court.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER, v. BLACK RIVER FALLS IRON COMPANY. } In Chancery.

The replication of Jacob Koehler, Daniel Koehler, and Henry Pfiffner, complainants, to the joint and several answer of Frederick Karcher, C. Ritter, H. Jaenish, F. Hawser, K. Seel, Frederick Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob, and Julius W. Haas, defendants.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

GEORGE W. LAKIN,
Solicitor for Complainants.

And afterwards, to wit, on the 21st day of August, A.D. 1860, came the parties, by their solicitors, and filed their stipulation as to testimony, as follows:

Stipulation as to Testimony.

United States District Court, District of Wisconsin.

JACOB KOEHLER, DANIEL KOEHLER, HENRY PFIFFNER, v. BLACK RIVER FALLS IRON COMPANY and others. } In Ch'y. For. of Mortgage.

It is stipulated by and between the parties, plaintiff and defendants, that the depositions which have been taken shall be considered

as taken in due time; and matters of form are waived. Any parts or portions of the books or exhibits appended to any deposition which may be relevant, competent, or admissible in the case, may be read. Objections to the competency of the witnesses, or of their testimony, or of any part thereof, or to the admissibility of the same under the rules of evidence, or to the relevancy of the same, or of any part thereof, may be taken at the hearing or trial of the cause.

Trial to be had at an early day, and as soon as day can be agreed on.

Aug. 21, 1860.

HOOKER & SPANGENBERG,
Solicitors for Defendants.

G. W. LAKIN,
For Complainants.

And now, at this same term, to wit, October term, 1860, and on the second day thereof, to wit, on the second day of October, 1860, the following proceedings were had, to wit:

Order allowing Amendments to Bill.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER, *v.* BLACK RIVER FALLS IRON COMPANY. } In Equity.

This day came the parties by their counsel, and by consent the complainants amended their bill, by making F. Karcher, C. Ritter, H. Janisch, F. Haeuser, K. Seel, Fr. Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob, and Julius W. Haas, parties defendant, and by consent the cause by the pleadings is considered at issue as to these defendants, by the bill, answer, and replication.

Which amendment is as follows:

Amendment to Bill.

United States District Court, District of Wisconsin.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER, *v.* THE BLACK RIVER FALLS IRON COMPANY. } In Equity.

The complainants, by George W. Lakin, their solicitor, appear, and by leave of the court amend the bill of complaint herein, by inserting therein, as defendants therein, the following named persons, to wit: Frederick Karscher, C. Ritter, H. Janisch, F. Haeuser, K. Seel, Frederick Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob, and Julius W. Haas, all of whom are aliens, and sub-

jects of the king of Bavaria, in Germany, except Julius Haas, who is a citizen of the State of Iowa.

And insert: That the said defendants claim to have some interest in the mortgaged premises, or in some part thereof, as subsequent incumbrancers or otherwise.

GEORGE W. LAKIN,
Complainants' Solicitor.

Hearing.

And this cause came on to be heard upon the pleadings and proofs, and was argued by counsel, when the court took time to consider.

And same day (October 2, 1860), came the complainants by their counsel, Mr. Lakin, and filed their motion to suppress defendants' depositions, as follows:

Motion to suppress Defendants' Depositions.

The United States of America, District of Wisconsin, United States District Court.

JACOB KOEHLER, DANIEL KOEHLER, HENRY PFIFFNER,
v.
BLACK RIVER FALLS IRON COMPANY and others.
} In Equity.

And now, at the hearing of this cause, and before the depositions taken on the part of the defendants were read in evidence, the counsel for the complainants objected to the reading of, and moved the court to suppress the depositions on file, taken on the part of the defendants, to wit: the depositions of Russell C. Bryan, Henry Richter, Charles Haeuser, and John M. Levy, for the reason that they were not competent witnesses by whom to show the several matters testified to by them, or to show the non-execution of the mortgage, or any change or alteration in the same, by the affixing of the corporate seal, or otherwise; that the subscribing witnesses to said mortgage are the only competent witnesses by whom to prove the several matters sought to be proved by the defendants, unless the absence of such subscribing witnesses is accounted for.

GEORGE W. LAKIN,
Solicitor for Complainants.

The defendants' counsel here stated that Jacob Koehler, one of the subscribing witnesses to the complainants' mortgage, is one of the complainants in this suit, which statement was then and there admitted to be true by the counsel for the complainants.

And at the hearing of said cause the following testimony was read in evidence on the part of the complainants.

1349

Note.

La Crosse, August 13th, 1858.

$15,000 00.

The Black River Falls Iron Company promises, for value received, to pay to the order of Daniel Koehler and Casper Bircher, nine months after date, the sum of fifteen thousand dollars and twelve per cent. interest thereof per annum.

(Pay to Jacob Koehler and Henry Pfiffner, Casper Bircher.)

BLACK RIVER FALLS IRON COMPANY,
By CHLS. HAUSER, [L. S.]
President.

Attest, JOHN M. LEVY,
Secretary pro tem.

Witnesses,
D. G. Shillock,
Jacob Kohler.

Mortgage.

This indenture, made this thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty-eight, between the Black River Falls Iron Company, of the county of Jackson and State of Wisconsin, party of the first part, and Daniel Koehler of Dubuque in the State of Iowa, and Casper Bircher of Galena, State of Illinois, parties of the second part, witnesseth, that the said part of the first part, for and in consideration of the sum of fifteen thousand dollars to the same paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said parties of the second part, and to their heirs and assigns, forever, the following described premises and real estate, lying and being in the county of Jackson and State of Wisconsin, to wit: the southwest quarter of the northeast quarter of section No. nine (9), in township No. nineteen (19) north, of range No. six (6) west; and the northwest quarter of section No. twelve (12), in township No. twenty-one (21) north, of range No. four (4) west; and the northwest quarter of the southeast quarter of section No. eleven (11), in township No. twenty-one (21) north, of range No. four (4) west; and the south half of the northeast quarter of section No. eleven (11), in township No. twenty-one (21) north, of range No. four (4) west; and the southeast quarter of section twenty-eight (28), in township twenty-two (22) north, of range four (4) west; and the west half of the southwest quarter, and the southeast quarter of the southwest quarter of section No. twenty-eight (28), in township No. twenty-two (22) north, of range No. four (4) west; and the east half of the northeast quarter, and the northwest quarter of the northeast quarter of section No. thirty-three (33), in township No. twenty-two (22) north, of range No. four (4) west; and

the east half of the northwest quarter, and southwest quarter of the northeast quarter of section No. thirty-three, in township No. twenty-two (22) north, of range No. four (4) west; and the east half of the northwest quarter of section No. thirty-four (34), in township twenty-two (22) north, of range No. four (4) west; and the west half of the northwest quarter of section No. thirty-five (35), in township No. twenty-two (22) north, of range No. four (4) west; together with all and singular the hereditaments and appurtenances thereunto belonging and in anywise appertaining, and also all the right, title, estate, claim, interest, or demand whatsoever of the said party of the first part, either in law or equity, excepting, however, all those lots in New Danemara which have been either sold or contracted to be sold by the said party of the first part; which said lots shall not be touched, affected, or interfered with in any manner or wise whatsoever by this instrument.

To have and to hold the above bargained premises, with the appurtenances, unto the said parties of the second part, their heirs, executors, administrators, and assigns, forever. Provided always, and these presents are upon this express condition, that if the said Black River Falls Iron Company, party of the first part, or the successors or assigns or legal representatives of the same, shall well and truly pay or cause to be paid to the said parties of the second part, their heirs, executors, administrators, or assigns, the sum of fifteen thousand (15,000) dollars, together with twelve per cent. interest thereof per annum from date, nine months after the date of these presents, according to the terms of a certain promissory note, bearing even date herewith, executed by the Black River Falls Iron Company, the said party of the first part, to the order of the said parties of the second part, for the said sum of fifteen thousand dollars with twelve per cent. interest, and payable nine months after date, as collateral security, then these presents and the said promissory note shall cease and be null and void.

And the said Black River Falls Iron Company doth further covenant and agree that the same will pay all taxes and assessments of every nature that may be assessed on said premises previous to the day appointed in pursuance of any law of this State for the sale of lands for taxes; and also will pay the sum of fifty dollars as solicitor's fees in case of foreclosure of this mortgage, by reason of the non-performance of any conditions hereof by said party of the first part; and in case of the non-payment of said sum or any part thereof, at the time above limited for the payment thereof, or in case of the non-payment of any taxes that may be assessed on said premises in manner aforesaid, then and in either case it shall and may be lawful for the said parties of the second part, their heirs, executors, administrators, or assigns, and the said party of the first part doth hereby covenant and agree, and by these presents empower and authorize, the said parties of the second part, their heirs, executors, administrators, or

assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances thereunto belonging, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns, forever, good, ample, and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided; and out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges, and the sum of fifty dollars, solicitor's fees as aforesaid, rendering the surplus moneys, if any there be, to the said party of the first part and its legal representatives, after deducting the costs of such vendue as aforesaid.

In witness whereof the said party of the first part hath hereunto set its name and seal the day and year first above written.

BLACK RIVER FALLS IRON COMPANY,
By CHLS. HAUSER, [L. S.]
President.

Signed, sealed, and delivered
in presence of
D. G. SHELLOCK,
JACOB KOHLER.

Attest, JOHN M. LEVY,
Secretary pro tem.

State of Wisconsin, La Crosse County, *ss.*

On this 13th day of August, 1858, personally appeared before me, the above-named Black River Falls Iron Company, by Charles Hauser, president of the same, and John M. Levy, secretary pro tem. of the same, to me known to be the persons who executed the foregoing instrument, and acknowledged the same to be the act and deed of the same.

D. G. SHILLOCK, [L. S.]
Notary Public in and for the State of Wisconsin,
La Crosse County.

In consideration of the sum of seven thousand ($7000) dollars to me in hand paid by Jacob Koehler and Henry Pfiffner, of the city of Galena, in the State of Illinois, the receipt whereof is hereby acknowledged, I do hereby transfer, assign, and set over to the said Jacob Koehler and Henry Pfiffner, their heirs and assigns, all my right, title, and interest in and to the within mortgage and instrument; and do hereby constitute and appoint the said Jacob Koehler and Henry Pfiffner my true and lawful attorneys, in my name or otherwise, but at their own costs and charges, to take all legal measures which may be proper or necessary for the complete recovery and enjoyment of the assigned premises.

Witness my hand and seal this 21st day of September, A. D. 1858.

CASPAR BIRCHER. [SEAL.]

In presence of
B. B. HOWARD,
JOHN W. CAMPBELL.

State of Illinois, Jo Daviess County, *ss.*

I, Bushrod B. Howard, a notary public in and for said county and State aforesaid, do hereby certify that Casper Bircher is personally known to me as the person whose name is subscribed to the above assignment, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of assignment as his free and voluntary act, for the uses and purposes therein set forth.

In witness whereof I have hereunto set my name and affixed
[L. S.] my seal notarial, at Galena, Illinois, this 21st day of September, A. D. 1858.

B. B. HOWARD,
Notary Public.

United States of America, State of Illinois, *ss.*

I, O. M. Hatch, secretary of state of the State of Illinois, do certify that Bushrod B. Howard, who signed the foregoing certificate, is now, and was at the time of signing the same, notary public in and for the county of Jo Daviess and State of Illinois, duly commissioned and qualified to office, with full power by the laws of this State to issue certificates as aforesaid; that said certificate is in due form of law, and by the proper officer, and that full faith and credit are due his official attestations.

In testimony whereof I have hereunto set my hand and the great seal of State, at the city of Springfield, this 27th
[L. S.] day of June, in the year of our Lord one thousand eight hundred and sixty, and the independence of the United States the eighty-fourth.

O. M. HATCH,
Secretary of State.

Executive Department, Illinois.

I, John Wood, Governor of the State of Illinois, do hereby certify that O. M. Hatch, who signed the foregoing certificate, is now, and was at the time of signing the same, secretary of state of the State of Illinois, duly elected and qualified to said office, and that full faith and credit are due his official actions.

In testimony whereof I have hereunto set my hand. Done at the city of Springfield, this 27th day of June, A. D. 1860.

JOHN WOOD.

Office of the Register of Deeds, Jackson County, Wisconsin.

I certify that this mortgage was filed for record August 14th, 1858, at 3 o'clock P.M., and is recorded in volume 2 of Mortgages, pages 61, 62, and 63.

R. C. BRYAN,
Register.

Office of the Register of Deeds, County of Jackson.

I certify that this assignment was filed for record January 29th, 1859, at 2 o'clock P.M., and was duly recorded in vol. 2 of Mortgages, page 140.

R. C. BRYAN,
Register.

Indorsed: Cyrus K. Lord, commissioner of the U. States Dist. Court for the Dist. of Wisconsin.

United States of America, State of Wisconsin.

Personally appeared before me, Cyrus K. Lord, a commissioner duly appointed by the District Court of the United States in and for the District of Wisconsin, Jacob Koehler, of lawful age; after being by me duly sworn, makes oath and states that he is one of the complainants in a certain cause in equity, now pending in the District Court of the United States for the District of Wisconsin, wherein said affiant is one of the complainants, and the Black River Falls Iron Company et al. are defendants, on foreclosure of a mortgage. This affiant further states that John M. Levy and John C. Fisher are material and necessary witnesses for the complainants in said cause, and that said witness reside in the city of La Cross, more than one hundred miles from the place where said court is held, and where the attorneys of the defendants reside. This affiant further states that John M. Levy, one of the above-named witnesses, is the president of the Black River Falls Iron Company, and that his deposition has been taken ex parte in this cause, on behalf of the defendants; and that the other defendants, who are permitted to defend, reside at Dubuque, in the State of Iowa, and in Germany, beyond the United States, as this affiant is informed and believes. This affiant further states these are the reasons for not serving a notice on the defendants to take these depositions; and that John M. Levy is the president of said company, who are the defendants, and as such president, has notice, on the part of said defendant, the Black River Falls Iron Company, of the time and place of taking said depositions.

Wherefore, he prays that the deposition of said witnesses may be

taken in pursuance to law, and that the deposition of said John M. Levy may be taken and certified as the cross-examination to his deposition already taken in this cause on the part of the defendants.

And further saith not.

JACOB KOEHLER.

Subscribed and sworn to before me this 10th day of August, 1860.

CYRUS K. LORD,
Commissioner of the United States District Court
for the District of Wisconsin.

The United States of America, District of Wisconsin.

Be it remembered, that on the (10th) tenth day of August, one thousand eight hundred and sixty, at my office, at the city of La Crosse, in said State of Wisconsin, Jacob Koehler personally appeared before me, Cyrus K. Lord, a commissioner appointed under the laws of the United States to take affidavits and acknowledgments of bail, and made oath that he is one of the complainants in a certain cause in equity, now pending in the District Court of the United States for the District of Wisconsin, wherein the Black River Falls Iron Company was defendant; that the testimony of John M. Levy and John C. Tuhr was material and necessary for them, the said complainants, in the prosecution of said suit, and that they, the said John M. Levy and John C. Tuhr, lived at the city of La Crosse, in the State of Wisconsin, more than one hundred miles from the city of Milwaukie, where the court at which the said complainants expected the said cause would be tried, was appointed by law to be held; that of Black River Falls Iron Company, John M. Levy is president, and resides in said city of La Crosse, and that others reside in the city of Dubuque, State of Iowa, and others in Germany beyond the United States; and that John M. Levy is the president of the said company who are the defendants, and as such president, has notice on the part of said defendants, the Black River Falls Iron Company, of the time and place of taking such deposition; and the said Jacob Koehler requested me that the said John M. Levy and John C. Tuhr might be examined according to the directions of the act of Congress in such case made and provided.

Wherefore, I ordered that the said John M. Levy and John C. Tuhr should be examined de bene esse, before me, at my office, in the city of La Crosse, in the State of Wisconsin, on the tenth day of August, A.D. eighteen hundred and sixty; and as well the said Jacob Koehler, as the said Black River Falls Iron Company, by John M. Levy, the president of said company, appearing before me at my office, this tenth day of August, one thousand eight hundred and sixty, I have therefore proceeded with the said examination.

CYRUS K. LORD,
Court Commissioner of the United States District Court
for the District of Wisconsin.

The United States of America, District of Wisconsin, *ss.*

Be it remembered, that on this tenth day of August, in the year one thousand eight hundred and sixty, I, Cyrus K. Lord, a commissioner duly appointed by the District Court of the United States for the district of Wisconsin, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking affidavits and bail in civil action depending in the courts of the United States, passed February 20th, 1812;" and the act of Congress, entitled "An act in addition to an act entitled, 'An act for the more convenient taking of bail in civil causes depending in the courts of the United States, passed March 1st, 1817;'" and the act entitled "An act to establish the Judicial Courts of the United States, passed September 24th, 1789;" did cause personally to appear before me, at my office in the city of La Crosse, county of La Crosse, and State of Wisconsin, in said district, John M. Levy and John C. Fuhr, to testify on the part of the complainants, in a certain cause depending in the District Court of the United States for the district of Wisconsin, at Milwaukie, Wisconsin, wherein Daniel Koehler, Henry Pfiffner, Jacob Koehler, are complainants, and The Black River Falls Iron Company et als., are defendants.

Deposition of J. M. Levy.

And the said John M. Levy, being about the age of forty-three years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, I carefully examined the said John M. Levy, and he did thereupon depose, say, and testify as follows, to wit:

Interrogatory 1st. Has your deposition been taken in this case by the defendants?

Answer. My deposition was taken in this case on the part of the defendants, on the 27th day of July, A.D. 1860, before Cyrus K. Lord, commissioner of the United States District Court for the district of Wisconsin, residing at the city of La Crosse, Wisconsin.

Int. 2d. Were you a stockholder and director in The Black River Falls Iron Company in the year A.D. 1858?

Ans. I was a stockholder and a director of the company in the year 1858, and also in the year 1859, and am now the president of the company.

(Cyrus K. Lord, court commissioner, U. S. Dist. Court. John M. Levy.)

Int. 3d. Was there a meeting of the stockholders of said company in May, A.D. 1858? if so, what number of stockholders was represented at said meeting?

Ans. There was a stockholders' meeting in May, 1858; all the stockholders were represented at said meeting.

Int. 4th. Were directors elected at said meeting in May, 1858? if so, who were elected directors, and for what length of time were they elected?

Ans. Directors were elected at said meeting; the directors elected were, Charles Hauser, John C. Fuhr, John M. Levy, Jacob Koehler, and Henry Pfiffner; they were elected for one year, and until their successors were elected.

Int. 5. Who were elected president and treasurer of said company?

Ans. Charles Hauser was elected president in 1858, and John C. Fuhr was elected treasurer.

Int. 6. Was the secretary of the company a director or a member of the board of directors?

The secretary was not a member of the board of directors; he was only the clerk of the company, and had no vote in its deliberations.

(Cyrus K. Lord, court commissioner, U. S. Dist. Court for the Dist. of Wisconsin. John M. Levy.)

Int. 7. Was any resolution passed by the stockholders, at their meeting, authorizing or directing a mortgage to be made by the directors; if so, can you give a copy of the resolution?

Ans. There was a resolution passed by the stockholders' meeting, in May, 1858, directing the directors then to be elected, at that meeting, to get an advance to the company, and execute a mortgage on the real estate of the company; I cannot furnish a copy of said resolution, as the book of the company has been returned into court, with the depositions taken in this case, that contains said resolution, and for particulars I refer to said resolution in said book returned into court.

Int. 8. Was the company indebted to Daniel Koehler and Caspar Bircher for advances made and to be made by them, and for claims and notes held by them against said company?

Ans. The company was indebted to Daniel Koehler and Caspar Bircher for advances made, and for claims and notes they held against the company; they were to make other advances.

(Cyrus K. Lord, court commissioner, U. S. Dist. Court for Dist. of Wisconsin. John M. Levy.)

Int. 9. Was there any meeting of the directors in August, 1858; if so, was there any settlement made by the directors with them? and was any direction or authority given by the board authorizing and directing a mortgage to be executed for the indebtedness then due, and advances to be made; if so, please insert a copy of the resolution?

Ans. There was a meeting of the directors on the 13th day of August, 1858. We made a settlement, and allowed the notes and claims due Daniel Koehler and Caspar Burcher against the company. The board of Directors passed an order, or resolution, directing a mortgage to be made to them, the said Daniel Koehler

and Caspar Burcher, to secure the amount then due them, and for advances to be made to the company by them. I cannot furnish a copy of the resolution, but you will find the original resolution on the book of proceedings of the company, in my handwriting as secretary pro tem., I think on pages 31 and 32. As the book is returned into court with the depositions taken by the defendants in this case, reference is thereto had for particularity.

(Cyrus K. Lord, Court Commissioner for U. S. Dist. Court for Dist. of Wisconsin.) (John M. Levy.)

Int. 10. Were all the directors present? Was any mortgage made in pursuance of said resolution?

Ans. All the directors were present; this mortgage was made in pursuance of said resolution.

(The witness examining a mortgage produced by complainant.)

Int. 11. Examine the mortgage here produced, and state if that is the mortgage then executed by you? State who the mortgage and note produced was signed by, and if the signatures to the same is in the handwriting of the president and secretary; and if the seal attached thereto is the genuine seal of the company? (Here the complainant produced the original mortgage in this suit, with the note accompanying the same, on which I have written my name, with the additional words, "Commissioner of the U. States Dist. Court for the Dist. of Wisconsin.")

Ans. I have examined the mortgage; that is the same mortgage and note then executed; it is signed by myself as secretary pro tem., and by Chls. Hauser as president of the company; the same was executed by us as president and secretary: the seal attached there—

(Cyrus K. Lord, Court Commission. U. S. John M. Levy.)

to is the genuine seal of the company.

Int. 12th. Was the mortgage executed, acknowledged, and delivered by you, as the officers of the company, intending and believing you were mortgaging the property of the company?

Ans. The mortgage and note was executed by us in good faith, as the officers of the company, under the direction of the board of directors, all present, to secure the indebtedness to them, the said Daniel Koehler and Caspar Burcher, then due, and the advances they were to make.

Int. 13. Was there any meeting of the stockholders at any time before the executing and delivering the mortgage, in which any resolution or direction was passed revoking the authority to make the mortgage?

Ans. There was no meeting of the stockholders at any time, revoking, or in any way restricting the directors from making any mortgage previous to the making of this mortgage.

Int. 14. At the time of making the mortgage, was any contract and agreement entered into between the company and—

(John M. Levy.) (Cyrus K. Lord, Court Commissioner U. S. Dist. Court for Dist. of Wisconsin.)
Daniel Koehler and Caspar Burcher, to secure the payment of any advances to be made?

Ans. At the time this mortgage was made, there was a contract entered into, between the company and said Daniel Koehler and Caspar Burcher, to secure the balance to be advanced by them.

Int. 15. Was the advances made, and to be made to the company, in pursuance to the contract and agreement, actually paid and advanced to the company by Koehler and Burcher?

Ans. The advances made, and to be made, under the contract, were paid to the company.

Int. 16. Has the full consideration of said mortgage been paid and advanced to the company by said Koehler and Burcher?

Ans. It has been paid to the company.

Int. 17. Have you a copy of a charter of the company; if so, please annex it to this deposition?

Ans. I have a printed copy which I believe is correct. (Here witness pre—
(John M. Levy.) (Cyrus K. Lord, Court Commissioner U. States Dist. Court for the Dist. of Wisconsin.)
sents a printed paper, purporting to be a copy of the charter of the company, which is hereto annexed, and marked "Exhibit A."

Int. 22. At the time the mortgage was made, on the 13th day of August, A.D. 1858, were all the directors of the company present, and did they assent or not to the making and delivering the same?

Ans. All the directors were present, and they all assented, and directed the making of the mortgage and note.

Int. 23. What is your age, residence, and occupation? and are you at present the president of the Black River Falls Iron Company?

Ans. My age is forty-one years. My residence is in the city of La Crosse, Wisconsin. My occupation is, mayor of the city of La Crosse, State of Wisconsin. I am at present the president of the Black River Falls Iron Company, and I resides more than one hundred miles from Milwaukie, the place of trial of the above-entitled cause.

JOHN M. LEVY.

Subscribed and sworn to before me, this 10th day of August, 1860.

CYRUS K. LORD,
Court Commissioner U. S. District Court
for the District of Wisconsin.

Deposition of John C. Fuhr.

And the said John C. Fuhr, being about forty-three years of age, and having been by me first cautioned and sworn to testify the

truth, the whole truth, and nothing but the truth, in the cause aforesaid, I carefully examined the said John C. Fuhr, and he did thereupon depose, say, and testify as follows, to wit:

Int. 1st. That his age is forty-three years; his occupation tinner and stone dealer; his residence La Crosse, more than one hundred miles from Milwaukie, the place of trial of the above-entitled cause.

Int. 2d. Were you a director of the Black River Falls Iron Company in the year 1858?

Ans. I was a director of the company in that year.

Int. 3d. Who was the treasurer of the company in that year?

Ans. I was the treasurer of the company.

Int. 4th. Who were the directors of the company that year?

Ans. Charles Hauser, John C. Fuhr, John M. Levy, Jacob Koehler, and Henry Pfiffner. Charles Hauser was president and I was treasurer.

Int. 5th. Were you present at any meeting of the board of directors in August,

(Cyrus K. Lord, court commissioner. (U. States Dist. Court for Dist. of Wisconsin.) (John C. Fuhr.)

1858? Were all the directors present?

Ans. I was present at the meeting of the board of directors in August, 1858, on the 13th day of August. All the directors were present.

Int. 18th. Was any settlement made between the directors of the company and Daniel Koehler and Casper Burcher at that meeting? Was the company indebted to them then?

Ans. There was a settlement made, and the company was indebted to them.

Int. 19th. Was any mortgage and note authorized to be made at that meeting to secure said indebtedness?

Ans. The mortgage was ordered to be made for the amount due them, and for advances to be made by them in money and provisions.

Int. 20th. Were the advances so to be made actually paid to the company?

Ans. When the mortgage was made the company made a contract with

(Cyrus K. Lord, court commissioner U. S. Dist. Court for Dist. of Wisconsin.) (John C. Fuhr.)

Koehler & Burcher, in which they, Koehler & Burcher, agreed, if the company would make the mortgage to secure the indebtedness then due, they would make advances in money and provisions, all to be included in the mortgage. The mortgage was made for the debt then due and the advances to be made, and a contract taken to secure the advances. They paid the money to be advanced to me, as treasurer, and the provisions were furnished and delivered to the company afterwards.

Int. 21st. Did you, as a director, assent to making the mortgage for the indebtedness then due them, and for the advances that were to be made under the contract spoken of?

Ans. Every one of the directors were present, and assented to making the mortgage and note; it was the only terms on which we could secure an advance, by securing the debt then due, with the amount to be advanced by them under the contract.

(Cyrus K. Lord, court commissioner. U. States Dist. Court for Dist. of Wisconsin.) (John C. Fuhr.)

Int. 6th. Was the mortgage and note made at that time?

Ans. The mortgage and note were made at the time the contract to furnish advances was made, on the 13th of August, 1858.

Int. 7th. Were you present when the mortgage and note was made?

Ans. I was; all the directors were present.

Int. 8th. Examine the mortgage and note here presented, and state whether you have ever seen it before.

(Complainant here produced the original mortgage and note, referred to in the deposition of John M. Levy, and marked by me as commissioner.)

Ans. I have examined the mortgage and note presented. That is the note and mortgage executed at the time by the president and secretary, under the direction of the board of directors.

Int. 9th. Is the name subscribed in the proper handwriting of the president and secretary, and is the seal affixed

(Cyrus K. Lord, court commissioner, U. States Dist. Court for Dist. of Wisconsin.) (John C. Fuhr.)

the genuine seal of the corporation?

Ans. I was present and saw the president and Mr. Levy, secretary pro tem., sign it; the regular secretary was not present at that meeting of the board, and Mr. Levy was appointed as pro tem. secretary; the seal affixed to the mortgage and note is the genuine seal of the corporation.

Int. 10th. Were the advances secured to be made by the contract above named, ever made by Koehler and Burcher?

Ans. I received the money as treasurer, and Mr. Levy received the balance of the provisions for the company.

Int. 11th. Was the full consideration of the mortgage ever paid to the company?

Ans. The amount that the company was indebted to Koehler & Burcher was advanced before the mortgage was made, the advances that were to be made subsequently by them has been made, the full

(Cyrus K. Lord, court commissioner, U. S. Dist. Court, for Dist. of Wisconsin.) (John C. Fuhr.)

consideration has been received by the company.

Int. 12th. Who is now the president of the company?

Ans. John M. Levy.

JOHN C. FUHR.

Subscribed and sworn to before me, this 10th day of August, 1860.

CYRUS K. LORD,
Court Commissioner U. S. Dist. Court
for Dist. of Wisconsin.

United States of America, District of Wisconsin.

I, Cyrus K. Lord, a commissioner, duly appointed by the District Court of the United States for the District of Wisconsin, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for the taking of the foregoing deposition is, and the fact is, that the witnesses above-named, John M. Levy and John C. Fuhr, are material and necessary in the cause in the caption of the said deposition named, and that they, the said John M. Levy and John C. Fuhr, live in the city of La Crosse, in the State of Wisconsin, more than one hundred miles from the city of Milwaukee, the place of trial. I further certify that no notification of the time and place of taking the said deposition signed by me was made out and served on the adverse party, or his attorney, or agent, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because neither the defendants, the adverse party, or their attorney or agent, are within one hundred miles of La Crosse, the place of taking of the deposition.

I further certify, that on the ninth day of August, in the year of our Lord one thousand eight hundred and sixty, I was attended by M. G. Johnson, Esq., the plaintiff's counsel, and by the said witnesses, John M. Levy and John C. Fuhr, who are of sound mind and lawful age; and the said witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and the depositions were by me reduced to writing in the presence of the said witnesses, and from their statements, and after carefully reading the same to the said witnesses, they subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing, and depositing in the post-office, in the city of La Crosse, the same, with my own hand, to the clerk of the court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this tenth day of August, in the year of our Lord one thousand eight hundred and sixty.

CYRUS K. LORD, [L. S.]
United States Commissioner, duly appointed by the District Court of the United States, for the District of Wisconsin.

An Act to incorporate the Black River Falls Iron Company, in Jackson County, State of Wisconsin.

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. That Gustavus M. Wetzel, Charles Hæuser, Theobald Metzger, Augustus Weirich, and John Levis, their associates and successors, are hereby constituted a body politic and corporate, by the name of the "Black River Falls Iron Company," for the purpose of exploring for iron, lead, coal, and other ores, metals and minerals, and for mining, working and smelting, manufacturing and vending the same, and for such purpose may erect, make and construct adits, levels, shafts, pits, furnaces, forges, mills, buildings, roads, races, and all other fixtures, machinery and apparatus, and do all other work necessary for carrying on their operations and manufactory; and by that name may contract and be contracted with, sue and be sued, plead and be impleaded, appear, prosecute and defend, in any court of law or equity, in all suits and actions; may have a common seal, and the same alter and renew at pleasure, and may enjoy all the privileges incident to corporations, and may purchase, hold, sell, mortgage, transfer and convey any real or personal estate: provided, the real estate required for said mining and manufacturing purposes be within said Jackson county, or the counties immediately joining thereto.

Section 2. That the first meeting of the said corporation may be called by the persons named in this act, or any three of them, or their attorneys, at such time and place as they may select, and at such meeting a board of directors shall be chosen from amongst the stockholders by the votes of the majority of the stockholders present at such meeting, and such board of directors shall take charge of the operations of the company, subject to such rules, regulations and by-laws as may be adopted by the stockholders. The said directors shall hold office for one year, or until their successors are elected, and may adopt such by-laws and regulations for the government of the concerns of the company as they may deem expedient, not inconsistent with the rules made by the stockholders as aforesaid, nor with the constitution and laws of the United States or of this State.

Section 3. The directors shall cause a book to be kept, containing

the names of all persons who are stockholders of said company, showing the place of residence, and the number of shares of stock held by each respectively, and the times when they became respectively the owners of said shares, and the amount of stock actually paid in, which book shall, during the usual hours of each secular day, be opened at the place of business of said company, for the inspection of stockholders and creditors of said company and their representatives; the liability of each stockholder being in the nature of a contract to pay a certain sum of money, the consideration for which is the shares of stock which he may hold in said company.

Section 4. The capital stock of said company shall be twenty thousand dollars, with the privilege of extending the same at any time to any amount not exceeding one hundred thousand dollars. The said company or corporation may divide their capital stock into such number of shares and provide for the sale and transfer thereof in such manner and form as they may deem expedient, and may levy and collect assessments, forfeit and sell delinquent shares, declare and pay dividends on the shares in said company, in such manner as the by-laws may direct.

Section 5. That the said company or corporation shall not contract debts until the sum of ten thousand dollars of the capital stock is paid in or secured, no part of which shall be withdrawn, or in any manner diverted from the business of the company, and shall not contract debts at any time to an amount exceeding the capital stock of said company.

Section 6. This act to take effect and be in full force for the term and space of fifty years thereafter; provided, the company hereby created be organized within three years from the date of its passage.

WILLIAM HULL,
Speaker of the Assembly.
L. P. HARVEY,
President pro tem. of the Senate.

Approved March 31, 1856.

COLES BASHFORD.

State of Wisconsin, Secretary's Office, *ss.*

The Secretary of State of the State of Wisconsin, does hereby certify, that the foregoing act has been compared with the original enrolled act deposited in this office, and that the same is a true and correct copy thereof and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed [L. S.] the great seal of the State, at the Capitol, in Madison, this second day of May, 1856.

D. W. JONES,
Secretary of State.

"*A.*"

This is the exhibit referred to in the deposition of John M. Levy, as "*Exhibit A.*"

CYRUS K. LORD,
Court Commissioner, U. States Dist. Court
for the Dist. Wisconsin.

And at the hearing of said cause, the following testimony was read in evidence on the part of the defendants:

Note.

JACKSON COUNTY, WISCONSIN,
March 4th, A.D. 1859.

$12,610\frac{71}{100}$

The Black River Falls Iron Company, for value received, promises to pay on demand, to Fr. Karcher, C. Ritter, H. Janisch, F. Haeuser, K. Seel, Fr. Mueller, F. L. Koenig, S. Schuhmacher, G. Vogt, J. W. Jacob, and Julius W. Haas, or to their order, the sum of twelve thousand six hundred and ten $\frac{71}{100}$ ($12,610\frac{71}{100}$) dollars, with ten per cent. interest.

THE BLACK RIVER FALLS IRON COMPANY,
By CHLS. HAUSER,
The President of the same.
And EMIL HAEUSER,
The Secretary of the same.

Mortgage.

This indenture, made this fourth of March, in the year of our Lord one thousand eight hundred and fifty-nine, between the Black River Falls Iron Company, party of the first part, and Fr. Karcher, C. Ritter, H. Janisch, F. Haeuser, K. Seel, Fr. Mueller, F. L. Koenig, S. Schuhmacher, G. Vogt, J. W. Jacob, and Julius W. Haas, parties of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of twelve thousand six hundred and ten 71–100 dollars, to the same paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said parties of the second part, and to their heirs and assigns, forever, the following described premises and real estate, lying and being in the county of Jackson, and State of Wisconsin, to wit: the southwest $\frac{1}{4}$ of northeast $\frac{1}{4}$ of section nine (9), township nineteen (19) north, of range six (6) west; and the northwest $\frac{1}{4}$ of section twelve (12), in township twenty-one (21) north, of range four (4) west; and the northwest $\frac{1}{4}$ of southeast $\frac{1}{4}$ of section eleven (11), township twenty-one (21) north, of range four (4) west; and the south $\frac{1}{2}$ of northeast $\frac{1}{4}$ of section eleven (11), in

township twenty-one (21) north, of range four (4) west; and the southeast ¼ of section twenty-eight (28), in township twenty-two (22) north, of range four (4) west; and the west ½ of southwest ¼, and the southeast ¼ of the southwest ¼ of section twenty-eight (28), in township twenty-two (22) north, of range four (4) west; and the east ½ of northeast ¼, and the northwest ¼ of northeast ¼ of section thirty-three (33), in township twenty-two (22) north, of range four (4) west; and the east ½ of northwest ¼, and the southwest ¼ of northeast ¼ of *of* section thirty-three (33), in township twenty-two (22) north, of range four (4) west; and the east ½ of northwest ¼ of section thirty-four (34), in township twenty-two (22) north, of range four (4) west; and the west ½ of northwest ¼ of section thirty-five (35), in township twenty-two (22) north, of range four west; all the aforesaid land being west of the 4th principal meridian, and all the lots and blocks in New Danemara, with the only exception of those lots which have been sold or contracted to be sold by the said party of the first part, without having been reconveyed to the said party of the first part, together with all and singular the hereditaments and appurtenances thereunto belonging and in anywise appertaining, and also all the right, title, estate, and claim, interest, or demand, whatsoever, of the said party of the first part, either in law or equity.

To have and to hold the above bargained premises with the appurtenances, unto the said parties of the second part, their heirs, executors, administrators, and assigns, forever.

Provided always, and these presents are upon the express condition, that if the said party of the first part, or the successors or assigns, or the legal representatives of the same, shall well and truly pay, or cause to be paid, to the said parties of the second part, their heirs, executors, administrators, or assigns, the sum of twelve thousand six hundred and ten 71–100 (12,610 71–100) dollars, with ten per cent. interest, according to the terms of a certain promissory note, bearing even date with these presents, and executed by the party of the first part to the said parties of the second part, or to their order, for the sum of twelve thousand six hundred and ten 71–100 dollars, with ten per cent. interest, and payable on demand, as collateral security, then these presents and the said promissory note shall cease, and be null and void.

And the said party of the first part doth further covenant and agree, that the same will pay all taxes and assessments of every nature, that may be assessed on said premises, previous to the day appointed in pursuance of law for the sale of lands for the non-payment of taxes, and in case of non-payment of said sum, or any part thereof, at the time above limited for the payment thereof, or in case of the non-payment of taxes that may be assessed on said premises in manner aforesaid, then and in either case it shall and may be lawful for the said parties of the second part, their heirs, executors,

administrators, or assigns, and the said party of the first part doth hereby covenant and agree, and by these presents empower and authorize the said parties of the second part, their heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey, the said premises, with the appurtenances thereunto belonging, at public auction or vendue, and on such sale, to make and execute to the purchaser or purchasers, good, ample, and sufficient deeds of conveyance, in the law, pursuant to the statute in such case made and provided, and out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges, rendering the surplus moneys, if any there be, to the said party of the first part, or to its legal representatives, after deducting the costs of such vendue as aforesaid.

In witness whereof, the said party of the first part hath set its name, hand, and seal, the day and year first above written.

THE BLACK RIVER FALLS IRON COMPANY, [L. S.]
By CHS. HAUSER,
President of the same,
And EMIL HAEUSER,
Secretary of the same.

Signed, sealed, and delivered,
in presence of
D. G. SHELLOCK.
G. M. WETZEL.

State of Wisconsin, Jackson County, *ss.*

On this 4th of March, 1859, personally appeared before me, the above-named The Black River Falls Iron Company, by Charles Hauser, the president of the same, and Emil Hauser, the secretary of the same, to me known to be the persons who executed the above mortgage, and acknowledged the execution thereof to be the free act and deed of the same.

JOHN LEWIS,
Justice of the Peace in and for the County of Jackson, State of Wisconsin.

OFFICE OF THE REGISTER OF DEEDS,
COUNTY OF JACKSON, WISCONSIN.

I hereby certify that this mortgage was filed for record, March 4th, 1859, at 9 o'clock A.M., and was duly recorded in vol. 2 of Mortgages, pages 159, 160, and 161.

R. C. BRYAN,
Register.

District Court of the United States for the District of Wisconsin.
In Equity.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER,
v.
THE BLACK RIVER FALLS IRON COMPANY, FREDERICK KARCHER, C. RITTER, H. JANISCH, F. HAEUSER, K. SEEL, FREDERICK MUELLER, F. L. KOENIG, S. SCHUMACHER, G. VOGT, J. W. JACOB, and JULIUS W. HAAS, and WILLIAM M. HUBBY.

District of Wisconsin, *ss.*

Emil Spangenberg, of the city of Milwaukee, being duly sworn, deposes and says, that he is the agent, attorney, and one of the solicitors of the above-named defendants, except William M. Hubby, and makes this affidavit in their behalf.

That this defendant verily believes that the testimony of Russell C. Bryan, Henry Richter, John M. Levy, and Charles Haeuser, at present of La Crosse, in said district, is material and necessary for said defendants in the prosecution of the defence in said cause. That the said Russell C. Bryan and Charles Hauser live at Black River Falls, in the State of Wisconsin; and the said Henry Richter lives at Dubuque, in the State of Iowa; and the said John M. Levy at La Crosse, in the State of Wisconsin; and that each of said last-mentioned places are more than one hundred miles from the city of Milwaukee, where the court at which said defendants expect the said cause will be tried is appointed by law to be held.

And this deponent further says that, as he is informed and believes, the above-named plaintiffs reside in the city of Galena, in the State of Illinois, about two hundred miles distant from the place where the examination of the said witnesses is expected to be taken; and that, as he is also informed and believes, George W. Lakin, the solicitor of said plaintiffs, resides at the city of Milwaukee, about two hundred miles distant from La Crosse, the place where such testimony is expected to be taken as aforesaid.

EMIL SPANGENBERG.

Sworn to before me this 21st day of July, 1860.

CYRUS K. LORD,
Commissioner U. States Dist. Court for the Dist. of Wisconsin.

administrators, or assigns, and the said party of the first part doth hereby covenant and agree, and by these presents empower and authorize the said parties of the second part, their heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey, the said premises, with the appurtenances thereunto belonging, at public auction or vendue, and on such sale, to make and execute to the purchaser or purchasers, good, ample, and sufficient deeds of conveyance, in the law, pursuant to the statute in such case made and provided, and out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges, rendering the surplus moneys, if any there be, to the said party of the first part, or to its legal representatives, after deducting the costs of such vendue as aforesaid.

In witness whereof, the said party of the first part hath set its name, hand, and seal, the day and year first above written.

THE BLACK RIVER FALLS IRON COMPANY, [L. S.]
By CHS. HAUSER,
President of the same,
And EMIL HAEUSER,
Secretary of the same.

Signed, sealed, and delivered,
in presence of
D. G. SHELLOCK.
G. M. WETZEL.

State of Wisconsin, Jackson County, *ss.*

On this 4th of March, 1859, personally appeared before me, the above-named The Black River Falls Iron Company, by Charles Hauser, the president of the same, and Emil Hauser, the secretary of the same, to me known to be the persons who executed the above mortgage, and acknowledged the execution thereof to be the free act and deed of the same.

JOHN LEWIS,
Justice of the Peace in and for the County of Jackson, State of Wisconsin.

OFFICE OF THE REGISTER OF DEEDS,
COUNTY OF JACKSON, WISCONSIN.

I hereby certify that this mortgage was filed for record, March 4th, 1859, at 9 o'clock A.M., and was duly recorded in vol. 2 of Mortgages, pages 159, 160, and 161.

R. C. BRYAN,
Register.

District Court of the United States for the District of Wisconsin.
In Equity.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER,
v.
THE BLACK RIVER FALLS IRON COMPANY, FREDERICK KARCHER, C. RITTER, H. JANISCH, F. HAEUSER, K. SEEL, FREDERICK MUELLER, F. L. KOENIG, S. SCHUMACHER, G. VOGT, J. W. JACOB, and JULIUS W. HAAS, and WILLIAM M. HUBBY.

District of Wisconsin, *ss.*

Emil Spangenberg, of the city of Milwaukee, being duly sworn, deposes and says, that he is the agent, attorney, and one of the solicitors of the above-named defendants, except William M. Hubby, and makes this affidavit in their behalf.

That this defendant verily believes that the testimony of Russell C. Bryan, Henry Richter, John M. Levy, and Charles Haeuser, at present of La Crosse, in said district, is material and necessary for said defendants in the prosecution of the defence in said cause. That the said Russell C. Bryan and Charles Hauser live at Black River Falls, in the State of Wisconsin; and the said Henry Richter lives at Dubuque, in the State of Iowa; and the said John M. Levy at La Crosse, in the State of Wisconsin; and that each of said last-mentioned places are more than one hundred miles from the city of Milwaukee, where the court at which said defendants expect the said cause will be tried is appointed by law to be held.

And this deponent further says that, as he is informed and believes, the above-named plaintiffs reside in the city of Galena, in the State of Illinois, about two hundred miles distant from the place where the examination of the said witnesses is expected to be taken; and that, as he is also informed and believes, George W. Lakin, the solicitor of said plaintiffs, resides at the city of Milwaukee, about two hundred miles distant from La Crosse, the place where such testimony is expected to be taken as aforesaid.

EMIL SPANGENBERG.

Sworn to before me this 21st day of July, 1860.

CYRUS K. LORD,
Commissioner U. States Dist. Court for the Dist. of Wisconsin.

District Court of the United States for the District of Wisconsin.
In Equity.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER,
v.
THE BLACK RIVER FALLS IRON COMPANY, C. RITTER, H. JANISCH, F. HAUESER, K. SEEL, FREDERICK MUELLER, F. L. KOENIG, S. SCHUMACHER, G. VOGT, J. W. JACOB, JULIUS W. HAAS, and WILLIAM M. HUBBY.

District of Wisconsin, *ss.*

Let Henry Richter, Russell C. Bryan, John M. Levy, and Charles Haeuser, named in the annexed affidavit, be examined de bene esse before me accordingly, at my office at La Crosse, on the 21st day of July, A. D. 1860, at eight o'clock in the forenoon of said day.

Dated, La Crosse, July 21, 1860.

CYRUS K. LORD,
Commissioner U. States Dist. Court for the Dist. of Wisconsin.

Be it remembered, that on the twenty-first day of July, A. D. 1860, at the city of La Crosse, in the State of Wisconsin, application was made to me, Cyrus K. Lord, a commissioner appointed by the District Court of the United States for the District of Wisconsin, under and by virtue of the laws of the United States, to take affidavits and acknowledgments of bail, upon the affidavit of Emills Spangenberg, stating that he, the said Emil Spangenberg, was the agent, attorney, and one of the solicitors of the Black River Falls Iron Company, Frederick Karcher, C. Ritter, H. Janisch, F. Haeuser, K. Seel, Frederick Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob, and Julius W. Haas, who, together with William M. Hubby, are defendants in a certain suit pending in the District Court of the United States for the District of Wisconsin, wherein Jacob Koehler, Daniel Koehler, and Henry Pfiffner, were plaintiffs.

That the testimony of Russell C. Bryan, Henry Richter, John M. Levy, and Charles Haeuser, was material and necessary for said defendants in the prosecution of their defence in said cause, and that each of said witnesses lived more than one hundred miles from the city of Milwaukee, where the court at which the said defendants expected the said cause would be tried was appointed by law to be held, to wit, Russell C. Bryan and Charles Haeuser, at Black River Falls, in the State of Wisconsin; John M. Levy, at La Crosse, in said State; and Henry Richter, at Dubuque, in the State of Iowa. That Jacob Koehler, Daniel Koehler, and Henry Pfiffner, the

above-named plaintiffs, resided at Galena, in the State of Illinois, about two hundred miles from the city of La Crosse aforesaid; and that George W. Lakin, their solicitor, resided at Milwaukee, about two hundred miles from La Crosse aforesaid.

And I was requested on behalf of the said defendants, except the said defendant William M. Hubby, that the said Russell C. Bryan, Henry Richter, John M. Levy, and Charles Haiser might be examined, according to the directions of the act of Congress in such case made and provided.

Whereupon I ordered that the said Russell C. Bryan, Henry Richter, John M. Levy, and Charles Haiser should be examined de bene esse, before me, at my office at La Crosse; and they, together with the counsel for said defendants, appearing before me at my said office, on this twenty-first day of July, A.D. 1860, I have therefore proceeded with this examination.

Deposition of Russell C. Bryan.

And the said Russell C. Bryan, being carefully examined and cautioned, and sworn to testify the whole truth, and nothing but the truth, says: My name is Russell C. Bryan, my age fifty-five years, reside at Black River Falls, Jackson county, Wisconsin. My occupation is attorney at law, also am register (Cyrus K. Lord, commissioner, Russell C. Bryan.) of deeds for Jackson county, Wisconsin; have been register of deeds all the time since January fourth, 1858; while I have been such register, there has been received in the office of register of deeds for said county for record, a mortgage from the Black River Falls Iron Company to Daniel Koehler and Caspar Bircher, which mortgage was recorded in my office. The paper now shown to me is a true copy of such mortgage, and the certificate upon the back thereof contains the data of the registry of the mortgage. This paper is a true copy of the entire record of the mortgage referred to. (Which paper is now offered by the solicitor for the said defendants in evidence, and is hereunto annexed and marked "Exhibit A.") While I have been such register, there has been no other mortgage between the same parties received for record at said register's office; nor is there any record of any other mortgage between the same parties, upon the books in said office. I received this mortgage for record, and recorded it myself. It is my impression, and I feel pretty confident, there was no seal to said mortgage of the Black River Falls Iron Company. I think there was no seal at all to it. I wrote to a gentleman at Milwaukee directly after recording the mortgage, notifying him of the fact of there being no seal to it. At that time I had seen and was partially acquainted with the seal of the (Cyrus K. Lord, commissioner, Russell C. Bryan.) Black River Falls Iron Company. I remember there was an impression on my mind at the time that there was something wrong about

the mortgage, and that I wrote to a lawyer in Milwaukee, whom I understood to be interested in the matter, that there was no seal to the mortgage. The record of the mortgage in said register's office shows there was no seal whatever to the mortgage.

RUSSELL C. BRYAN.

Subscribed and sworn to before me, July 21, 1860.

CYRUS K. LORD,
Commissioner United States Dist. Court,
for Dist. of Wisconsin.

Deposition of Henry Richter.

And the said Henry Richter being carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, says: My name is Henry Richter, my age is thirty-eight years, my residence is in Dubuque, State of Iowa, my occupation is editing a newspaper. I know the plaintiffs in this suit; I also know the Black River Falls Iron Company, Julius W. Haas, and William M. Hubby, three of the defendants. I was at one time a director of the company, and afterwards secretary of the company. When I was first elected a director, which was on the seventh of May, 1857, I acted as (Henry Richter. Cyrus K. Lord, commissioner.) secretary, and until the by-laws were changed on the 18th day of May, 1858, which provided that the secretary should be elected by a board of directors. On the 19th day of May, 1858, at a session of the board of directors, I was elected secretary, and held the office until the first of October, 1858, and in fact was the acting secretary of said company, from the first meeting of the stockholders until the first day of October, 1858, and kept the records during all the time, except the record of the meeting of the board of directors held on the 13th day of August, 1858, and another meeting held on the 6th day of September, 1858, as contained on pages 31 and 32 of the book of records of said company, which two last meetings it appears were held at La Crosse, at which I was not present. I was at New Danamorra, the place of business of said company, at the time when said last-named meetings were held. I had no notice of said meetings.

The book now shown me is the book of records of said company, from the fifth day of May, 1857. (The counsel for the defendants offer in evidence certain portion of the book of records, as hereinafter translated from German into English by this witness, Henry Richter, and the whole of said book of records is hereunto annexed and marked Exhibit B.) (Henry Richter. Cyrus K. Lord, commissioner.)

The witness first translates from page 18 of said book, commencing on the 10th line from the top of said page, and continuing to the end of the 17th line of said page, to wit: " May 19th, afternoon ses-

sion, Mr. C. W. Schmidt makes the motion, that the directory hereafter to be appointed shall be authorized to endeavor before all the effecting of a loan of the highest possible amount, and in case of success to close it, and they are empowered to incumber for the same the works with buildings and appertaining lands, carried." The record above translated is a part of the general meeting of the stockholders, held at Danemara, on the 18th and 19th days of May, 1858.

(The counsel for the defendant also offers in evidence the record of a meeting of the board of directors, held on the 13th day of August, 1858, and also of one held on the 6th day of September, 1858, as the same is written in English, on pages 31 and 32 of said book of records, to wit.) The witness now translates from German into English a portion of said records contained on page 49, in said book, commencing with line 18 from the top of said page, and concluding with the 21st line, as follows: ("Upon this Mr. E. Hauser made the motion to cancel, if possible (Henry Richter. Cyrus K. Lord, commissioner.) the real estate mortgage in the hands of Galena men, carried.") This is a part of the record as appears from said book of records of an extra general meeting of the stockholders, held at New Danemara, on the 3 and 4 days of March, 1859.

The Black River Falls Iron Company had two seals when witness came into the office as secretary, only one of which was used. The seal upon the mortgage of the company to the defendants, Karcher and others, dated March 4th, 1859, is a fac simile of the seal in use by the company while I was connected with it. Both of the seals of the company were in the office of the company at New Danemara, on the 13th day of August, 1858, and in my charge, I being the only person in charge of the office; all the knowledge I have of a mortgage purporting to have been executed by The Black River Falls Iron Company to Daniel Koehler and Casper Bircher, on the 13th day of August, 1858, is derived from hearsay, and from the records of the company. I was not applied to on said 13th day of August, 1858, for either of the seals to be affixed to any mortgage, nor was either of the seals affixed to such mortgage with my knowledge. I was never applied to for either of the seals to be affixed to such a mortgage; on the 13th day of August, 1858, the company was indebted to (Henry Richter. Cyrus K. Lord, commissioner) Casper Bircher in the sum of twenty-five ($25) dollars, but was not indebted to Daniel Koehler; I have no knowledge that said Casper Bircher or Daniel Richter did, on the 13th day of August, 1838, or have at any time since, made advancements of money to said company.

(The counsel for the defendants offer in evidence pages 29 and 30 of said book of records, also pages 33 and 34, written in English; also a portion of the record of said company, on page 49, written in German, which last the witness translates as follows, commencing with the 22d line from the top, and continuing to line 28th, inclusive: "Mr. C. W. Schmidt then moves that chattel and real estate

mortgage be given in favor of the Du Buque stockholders, and those in Germany, and that the president be directed to execute the same, with the secretary, pursuant to paragraph 11 of the by-laws; carried." A paper presented to the witness. This paper is compilation of the by-laws of The Black River Falls Iron Company, in force August 13th, 1858. I have compared this compilation with the records of the company up to the 13th day of August, 1858, and find it to be correct, and correctly translated from German into English. I am a German, and understand the German language (Henry Richter, Cyrus K. Lord, commissioner) and also the English language. The paper above referred to as being a compilation of the by-laws of The Black River Falls Iron Company is now offered in evidence by the defendant's counsel, and is hereto annexed, and marked Exhibit C.

HENRY RICHTER.

Subscribed and sworn to before me, July 21st, 1860.

CYRUS K. LORD,
Commissioner U. S. Dist. Court for the Dist. of Wisconsin.

Deposition of Charles Hauser.

And the said Charles Haeuser, being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, says: My name is Charles Haeuser; my age is forty-three years; my residence, New Denamora, Jackson County, State of Wisconsin. I am superintendent of the Black River Falls Iron Company; I know the plaintiffs in this suit, also the defendants; I was president of the company from the 20th day of May, 1858, to the 20th day of July, 1859. I was present at a meeting of the board of directors of said company, held at La Crosse, August 13th, 1858. The (Cyrus K. Lord, commissioner. C. Haeuser) board of directors at that meeting resolved to execute a mortgage to Daniel Koehler and Caspar Bircher, in the sum of fifteen thousand dollars, and a mortgage was thereupon, at the same meeting, drawn up, in conformity with such resolution. John M. Levy acted as secretary, pro tem., at that meeting. Henry Richter was the secretary of the company at that time; he was not notified of the time and place of holding this meeting. I do not know any cause why he was not notified. A note was drawn up at the same time for the sum of fifteen thousand dollars, made payable to the same parties as mentioned in the mortgage, and the mortgage was intended to secure the payment of the note; the note and mortgage were dated August 13th, 1858; the note and mortgage were signed on that day, at that meeting, by this witness, as president of the company, and John M. Levy, as secretary, pro tem.; the seal of the company was not, at that affixed to the mortgage. I delivered the note and mort-

gage, after they were so signed, to Jacob Keelir, for Caspar Bircher and Daniel Koehler; at the time of this delivery neither seal of the company was affixed to the mortgage; neither seal of the (Cyrus K. Lord, commissioner. C. Haeuser) company was in La Crosse at that time. I left them in the company's office, at New Denamora. I do not know that either seal of the company was ever affixed to the mortgage; and believe they were not. Neither Daniel Keeler or Caspar Bircher were present at this meeting. The consideration of this note and mortgage were as follows:

Daniel Koehler and Caspar Bircher were to let the company have twelve hundred dollars in cash, and eight hundred dollars in provisions, and were to pay the following debts of the Black River Falls Iron Company: A note to Metzer, Koehler & Schwab of thirty-five hundred and seventy dollars; a debt to John C. Fuhr of nineteen hundred dollars; a debt to Jacob Koehler of twelve hundred and fifty-six dollars; two notes and interest to John M. Levy, on which there was due twenty-four hundred and four dollars.

These were the only consideration of the note and mortgage. About two or three weeks after the execution of the note and mortgage, twelve hundred dollars in cash was sent to the treasurer of the company, purporting to come from Daniel Koehler and Caspar Bircher. The eight (Cyrus K. Lord, commissioner. C. Hauser) hundred dollars in provisions were paid, but not all at one time. Jacob Koehler was one of the directors of the company, and present at the time this mortgage was given.

I was present at a general meeting of the stockholders held at New Denamora on the 4th day of March, 1859, at which there was a resolution passed to cancel the real estate mortgage given to the Galena men. The mortgage referred to in this resolution was the one given to Daniel Koehler and Casper Bircher for fifteen thousand dollars. At the same meeting a resolution was passed, authorizing the execution of a mortgage to the Dubuque stockholders and those living in Germany. The names of those living in Dubuque were Julius W. Haas; those living in Germany were Frederick Karcher, C. Ritter, H. Janisch, F. Haweser, K. Seel, Frederick Muller, F. L. Koenig, S. Schumacher, G. Vogt, and J. W. Jacob. The above-named persons were the ones referred to in the resolution to be secured by said mortgage. At that time the company was indebted to the stockholders, above named, living in Germany, and to certain others living in Dubuque, (Cyrus K. Lord, commissioner. C. Hauser) whom Julius W. Haas represented. This indebtedness was for money loaned by these different stockholders to the Black River Falls Iron Company; the amount of this indebtedness was about twelve thousand dollars; I do not recollect the exact amount. The note and mortgage which were given to secure that indebtedness were for the exact amount of the indebtedness, and which were given in conformity with the said resolution. C. HAUSER.

Subscribed and sworn to before me this 21st day of July, 1860.

CYRUS K. LORD,
Commissioner U. S. District Court for the
District of Wisconsin.

Deposition of J. M. Levy.

And the said John M. Levy, being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, says: My name is John M. Levy; my age is forty-one years; residence, La Crosse; occupation, mayor of the city of La Crosse. I know the plaintiffs; also know the Black River Falls Iron Company, Julius W. Haas, F. Haweser, and William M. Hubby, of the defendants. I am one of the stockholders of the Black River Falls Iron Company, and have been (Cyrus K. Lord, *Cyrus K. Lord*, commissioner. John M. Levy) since the organization of the company. I was present at a meeting of the company, or board of directors of the company, held at La Crosse on the 13th day of August, 1858, and acted as secretary pro tempore of that meeting. The record of the transactions of that meeting are in my handwriting, on pages 31 and 32 of the records of said company. A note and mortgage were drawn up at that meeting in conformity with the resolution which appears in the record referred to, the date of which note and mortgage was August 13, 1858; the amount was fifteen thousand dollars, and running to Daniel Keeler and Casper Bircher. I think they were signed on the night of the 13th by Charles Hauser, as president, and by myself, as secretary pro tem. Cannot say whether the seal of the company was affixed to the mortgage; upon reflection, I know we did not have the seal of the company there, and that it was not affixed to the mortgage. I never did affix the seal of the company to the mortgage, nor did I ever know of its being affixed; never saw the mortgage after that night.

JOHN M. LEVY.

Subscribed and sworn to before me, July 21, 1860.

CYRUS K. LORD,
Commissioner U. S. District Court for the
District of Wisconsin.

And I do further certify that each of the preceding depositions was reduced to writing by me, and signed by the said deponents respectively; and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

CYRUS K. LORD,
Commissioner of the U. S. District Court for the
District of Wisconsin.

"*Exhibit A.*"

This indenture, made this thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty-eight, between the Black River Falls Iron Company, of the county of Jackson, and State of Wisconsin, party of the first part, and Daniel Koehler, of Dubuque, in the State of Iowa, and Casper Bircher, of Galena, State of Illinois, parties of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of fifteen thousand dollars to the same paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said parties of the second part, and to their heirs and assigns, forever, the following described premises and real estate, lying and being in the county of Jackson, and State of Wisconsin, to wit:

The southwest quarter of the northeast quarter of section No. nine (9), in township No. nineteen (19) west, of range No. six (6) west; and the northwest quarter of section No. twelve (12), in township No. twenty-one (21) north, of range No. four (4) west; and the northwest quarter of the southeast quarter of section No. eleven (11), in township No. twenty-one (21) north, of *of* range No. four (4) west; and the south half of the northeast quarter of section No. eleven (11), in township No. twenty-one (21) north, of range No. four (4) west; and the southeast quarter of section twenty-eight (28), in township twenty-two (22) north, of range four (4) west; and the west half of the southwest quarter, and the southeast quarter of southwest quarter of section No. twenty-eight (28), in township No. twenty-two (22) north, of range No. four (4) west; and the east half of the northeast quarter, and the northwest quarter of the northeast quarter of section No. thirty-three (33), in township No. twenty-two (22) north, of range No. four (4) west; and the east half of the northwest quarter, and the southwest quarter of the northeast quarter of section No. thirty-three, in township No. twenty-two (22) north, of range No. four (4) west; and the east half of the northwest quarter of section No. thirty-four (34), in township twenty-two (22) north, of range No. four (4) west; and the west half of the northwest quarter of section No. thirty-five (35), in township No. twenty-two (22) north, of range No. four (4) west, together with all and singular the hereditaments and appurtenances thereunto belonging, and in any wise appertaining; and also all the right, title, estate, claim, interest, or demand, whatsoever, of the said party of the first part, either in law or equity, excepting, however, all those lots in New Danemora, which have been either sold, or contracted to be sold, by the said party of the first part, which said lots shall not be touched, affected, or interfered with, in any manner or wise whatsoever, by this instrument.

To have and to hold the above-bargained premises with the ap-

Subscribed and sworn to before me this 21st day of July, 1860.

CYRUS K. LORD,
Commissioner U. S. District Court for the
District of Wisconsin.

Deposition of J. M. Levy.

And the said John M. Levy, being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, says: My name is John M. Levy; my age is forty-one years; residence, La Crosse; occupation, mayor of the city of La Crosse. I know the plaintiffs; also know the Black River Falls Iron Company, Julius W. Haas, F. Haweser, and William M. Hubby, of the defendants. I am one of the stockholders of the Black River Falls Iron Company, and have been (Cyrus K. Lord, *Cyrus K. Lord*, commissioner. John M. Levy) since the organization of the company. I was present at a meeting of the company, or board of directors of the company, held at La Crosse on the 13th day of August, 1858, and acted as secretary pro tempore of that meeting. The record of the transactions of that meeting are in my handwriting, on pages 31 and 32 of the records of said company. A note and mortgage were drawn up at that meeting in conformity with the resolution which appears in the record referred to, the date of which note and mortgage was August 13, 1858; the amount was fifteen thousand dollars, and running to Daniel Keeler and Casper Bircher. I think they were signed on the night of the 13th by Charles Hauser, as president, and by myself, as secretary pro tem. Cannot say whether the seal of the company was affixed to the mortgage; upon reflection, I know we did not have the seal of the company there, and that it was not affixed to the mortgage. I never did affix the seal of the company to the mortgage, nor did I ever know of its being affixed; never saw the mortgage after that night.

JOHN M. LEVY.

Subscribed and sworn to before me, July 21, 1860.

CYRUS K. LORD,
Commissioner U. S. District Court for the
District of Wisconsin.

And I do further certify that each of the preceding depositions was reduced to writing by me, and signed by the said deponents respectively; and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

CYRUS K. LORD,
Commissioner of the U. S. District Court for the
District of Wisconsin.

"*Exhibit A.*"

This indenture, made this thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty-eight, between the Black River Falls Iron Company, of the county of Jackson, and State of Wisconsin, party of the first part, and Daniel Koehler, of Dubuque, in the State of Iowa, and Casper Bircher, of Galena, State of Illinois, parties of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of fifteen thousand dollars to the same paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said parties of the second part, and to their heirs and assigns, forever, the following described premises and real estate, lying and being in the county of Jackson, and State of Wisconsin, to wit:

The southwest quarter of the northeast quarter of section No. nine (9), in township No. nineteen (19) west, of range No. six (6) west; and the northwest quarter of section No. twelve (12), in township No. twenty-one (21) north, of range No. four (4) west; and the northwest quarter of the southeast quarter of section No. eleven (11), in township No. twenty-one (21) north, of *of* range No. four (4) west; and the south half of the northeast quarter of section No. eleven (11), in township No. twenty-one (21) north, of range No. four (4) west; and the southeast quarter of section twenty-eight (28), in township twenty-two (22) north, of range four (4) west; and the west half of the southwest quarter, and the southeast quarter of southwest quarter of section No. twenty-eight (28), in township No. twenty-two (22) north, of range No. four (4) west; and the east half of the northeast quarter, and the northwest quarter of the northeast quarter of section No. thirty-three (33), in township No. twenty-two (22) north, of range No. four (4) west; and the east half of the northwest quarter, and the southwest quarter of the northeast quarter of section No. thirty-three, in township No. twenty-two (22) north, of range No. four (4) west; and the east half of the northwest quarter of section No. thirty-four (34), in township twenty-two (22) north, of range No. four (4) west; and the west half of the northwest quarter of section No. thirty-five (35), in township No. twenty-two (22) north, of range No. four (4) west, together with all and singular the hereditaments and appurtenances thereunto belonging, and in any wise appertaining; and also all the right, title, estate, claim, interest, or demand, whatsoever, of the said party of the first part, either in law or equity, excepting, however, all those lots in New Danemora, which have been either sold, or contracted to be sold, by the said party of the first part, which said lots shall not be touched, affected, or interfered with, in any manner or wise whatsoever, by this instrument.

To have and to hold the above-bargained premises with the ap-

purtenances, unto the said parties of the second part, their heirs, executors, administrators, and assigns, forever.

Provided always, and these presents are upon this express condition, that of the said Black River Falls Iron Company, party of the first part, or the successors, or assigns, or legal representatives of the same, shall well and truly pay, or cause to be paid, to the said parties of the second part, their heirs, executors, administrators, or assigns, the sum of fifteen thousand (15,000) dollars, together with twelve per cent. interest thereof per annum from date, nine months after the date of these presents, according to the terms of a certain promissory note, bearing even date herewith, executed by the Black River Falls Iron Company, the said party of the first part, for the said sum of fifteen thousand dollars, with twelve per cent. interest, and payable nine months after date, as collateral security, then these presents and the said promissory note shall cease, and be null and void.

And the said Black River Falls Iron Company doth further covenant and agree, that the same will pay all taxes and assessments of every nature, that may be assessed on said premises previous to the day appointed, in pursuance of any law of this State for the sale of lands for taxes, and also will pay the sum of fifty dollars as solicitor's fees, in case of foreclosure of this mortgage, by reason of the non-performance of any conditions hereof by said party of the first part, and in case of the non-payment of *of* said sum, or any part thereof, or in case of the non-payment of any taxes that may be assessed on said premises in manner aforesaid, then and in either case it shall and may be lawful for the said parties of the second part, their heirs, executors, administrators, or assigns; and the said party of the first part, doth hereby covenant and agree, and by these presents empower and authorize, the said parties of the second part, their heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances thereunto belonging, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns, good, ample, and sufficient deeds of conveyances in the law, pursuant to the statute in such case made and provided; and out of the moneys arising from such sale to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges, and the sum of fifty dollars solicitor's fees as aforesaid, rendering the surplus moneys, if any there be, to the said party of the first part, and its legal representatives, after deducting the costs of such vendue, as aforesaid.

In witness whereof, the said parties of the first part hath hereunto set its name and seal, the day and year first above written.

BLACK RIVER FALLS IRON COMPANY.
By CHLS. HAUSER,
President.

Attest, JOHN M. LEVY,
Secretary pro tem.

Signed, sealed, and delivered
in presence of
D. G. SHILLOCK,
JACOB KOEHLER.

State of Wisconsin, La Crosse County, *ss.*

On this 13th day of August, 1858, personally appeared before me the above-named Black River Falls Iron Company, by Charles Hauser, president of the same, and and John M. Levy, secretary pro te. of the same, to me known to be the persons who executed the foregoing instrument, and acknowledged the same to be the act and deed of the same.

[SEAL.]

D. G. SHILLOCK,
Notary Public in and for the State of Wisconsin,
La Crosse County.

OFFICE OF THE REGISTER OF DEEDS,
COUNTY OF JACKSON, WIS.

I certify that the foregoing is a true transcript of a mortgage on record in my office.

Given under my hand, at Black River Falls, July 21st, 1860.

R. C. BRYAN,
Register.

OFFICE OF THE REGISTER OF DEEDS,
JACKSON COUNTY, WISCONSIN.

I certify that this mortgage was filed for record August 14th, 1858, at 3 o'clock P.M., and is recorded in volume 2 of Mortgages, pages 61, 62, 63.

R. C. BRYAN,
Register Deeds.

I certify this is the exhibit referred to in the deposition as "Exhibit A.," in Russell C. Bryan's deposition.

CYRUS K. LORD,
Commissioner U. States Dist. Court
for the District of Wisconsin.

Pages 29 and 30 of Record Book, Exhibit B., referred to in Deposition.

(Page 29.)

Assets.		Balances July 31st, 1858.	Liabilities.		
Stock acc't,	11,209 23		Capital acc't,	35,592	
Reserved fund,	3,795		N. Dunemora lots,	3,334 50	
Furnace acc't,	35,398 98		Profit and loss acc't,	94 05	
Iron ore acc't,	7,747 12				39,020 55
Sundry lands acc't,	2,092 35				
Sundry buildings,	4,378 70		Floating Debts.		
Brick-yard acc't,	453 50				
Warehouse acc't,	143 43		Bills payable,	23,773 04	
Teams acc't,	1,153 92		Superintendent's acc't,	1,544 51	
Sundry implem'ts,	563		Creditors as per statement,	7,359 96	
Interest acc't,	188 65				32,677 51
Expenditures acc't,	517 51				
Sundry exp. acc't,	140 35				
Charcoal acc't,	217 50				
Limestone acc't,	304 27				
Bills receivable,	1,000				
Foundry, Bl. and Ma.,	84 50				
Farm acc't,	96 49	69,486 50			
Debtors as per statement,		2,211 56			
		71,698 06			71,698 06

HENRY RICHTER,
Secretary.

Statement of acc't of Debtors and Creditors, July 31st, 1858.

Dr.			Cr.		
Bank of the City of La Crosse,	124		Aug. Schutz,	12	53
M. Held,	9	40	Douglass & Chaffey,	156	
Henry Menges,	105		Chs. Hauser,	567	04
R. C. Hilgard,	166		Henry Richter,	1,034	56
Julius Haas,	165		G. M. Wetzel,	530	46
E. Schlisht,	40		John C. Fuhr,	1,320	39
Lempert Schoned,	64		John Levis,	765	65
C. W. G. Joerns,	368		Otho Oehler,	210	09
Jacob Spaulding,	20	10	John H. Randel,	105	62
Jos. Deggeddorf,	125		H. D. Parsons,	5	59
Henry Ohde,	43	45	Jos. Johnson,	323	38
	1,229	95		5,031	31

Dr.	(Page 30.)		Cr.		
Amount forwarded,	1,229	95	Amount forwarded,	5,031	31
John Pollock,	5	03	Jos. Adam,	1	50
John Perry,	330	37	Jacob Koehler,	1,086	11
Newhoff & Bamberger,	1	75	Theol. Metzger,	92	12
E. Park,	14	59	H. & I. Pfiffner,	27	20
G. Gansler,	4	60	Lor. Shoral,	173	
Christ. Josten,	75		John Lusler,	160	50
Prop'tor of Jackson Co. Banner,	50		Fr. Gluck,	100	
Thorn S. Pierce,	486	72	Casp. Bircher,	25	
Verlunea,	11		J. M. Levy,	52	50
Fr. Miller,	1	75	G. Sharpf,	25	
H. Curts,	0	80	A. Pfiffner,	79	10
			Ledyard & Co.,	50	36
			C. W. Schmied,	2	50
			I. B. Jungen,	51	77
			Jos. Berg,	130	42
			D. Nettleton,	7	45
			Trudell,	6	50
			Prickett,	7	25
			Jos. Wilson,	1	25
			P. Rowe,	11	35
			I. Muhleis,	35	50
			Wm. Luke,	9	19
			H. Cordes & Co.,	165	10
			M. Durkert & Co.,	27	98
	2,211	56		7,359	96

HENRY RICHTER,
Secretary.

Pages 31 *and* 32 *of Record Book, referred to in Deposition as Exhibit "B."*

La Crosse, August 15th, 1858.

At a meeting held at La Crosse, composed of the directors of the Black River Falls Iron Company, present Chs. Hauser, pres., John C. Fuhr, treas., H. Pfiffner, J. Koehler, John M. Levy, on motion, John M. Levy was appointed secretary for meeting. (Unanimous.)

Resolved, That this meeting take into consideration the present embarrassing state of affairs of the company, as reported by the superintendent, viz.: no provisions on hand, no money to buy lime, and the distressing circumstances in general.

Resolved, That the company contract a debt with Messrs. Daniel Koehler of Dubuque, Iowa, and Casper Bircher of Galena, Ill., for fifteen thousand dollars, to buy provisions, lime, and in a measure to secure outstanding debts incurred by the company, and that the same be secured by a mortgage and note on the real estate of the company, payable nine months from date.

Carried unanimous, and papers drawn and made accordingly.

Resolved, That D. G. Shillock, Esq., be, and is hereby appointed, attorney of the company to transact all legal business required. (Carried.)

Resolved and carried, That the assessment of ten per cent. on the capital stock made on the 18th of May, 1858, be and is hereby called on to be paid by the 15th of September, 1858, and that each and every share of which the aforesaid assessment shall not be paid as aforesaid, shall, according to section 4 of the company's charter, be sold by the treasurer at public auction, after the same shall have been advertised at least 14 days in one or more of the newspapers printed in the city of La Crosse, said sale to be held at the court-house in said city of La Crosse, to the highest bidder.

On motion, the meeting of directors adjourned.

The debts to liquidated were as follows:

Metzer, Koehler & Swab, a note and interest, .		$3,570
John C. Fuhr, ...		1,900
Jacob Koehler, ...		1,256
John M. Levy, 2 notes and interest, . . .	$2,528	
Less $124 charged, ...	124	
		2,404

These accounts above where included in the mortged given as per first resolution.

C. HAUSER,
President.

Attest, JOHN M. LEVY,
Secretary pro tem.

At a meeting of the directors, held at La Crosse, Wis., September 6th, 1858, present C. Hauser, pres., J. C. Fuhr, treas., J. M. Levy, sec. pro tem.

The directors, after consulting with Mr. Wm. M. Hubby, and considering the welfare of the company,

Resolved, That we consider it for the best interest of the company to employ Wm. M. Hubby as assistant superintendent of the Black River Falls Iron Company at a salary of two thousand dollars per annum, one thousand dollars of which Mr. Charles Hauser has volunteer to be deducted from his salary and applied to the payment of Mr. Hubby. The said salary and engagement to commence from September 6th, 1858.

Resolved, That the office of secretary to the company be declared vacant on the 1st day of October, 1858. The present incumbent, H. Richter, is hereby declared discharged from office of said post of secretary.

C. HAUSER,
President.

Attest, JOHN M. LEVY,
Secretary pro tem.

Pages 33 *and* 34 *of Record Book, "Exhibit B.," referred to in Deposition.*

Balances, August 31, 1858.

Dr. Assets.		Liabilities.		Cr.
Stock acc't,	$11,134 93	Capital acc't,		$35,592 00
Reserved acc't,	3,795 00	New Danemora lots,		3,334 50
Furnace acc't,	35,491 98	Profit and loss,		69 05
Iron ore acc't,	7,878 07	John C. Fuhr, treas.,		60 75
Sundry lands,	2,092 35			
Sundry buildings,	4,372 70	Floating debts.		
Brickyard acc't,	453 50	Superintendent's ac.,	$1,887 44	
Warehouse acc't,	458 09	Bills payable,	24,235 29	
Teams acc't,	1,339 73	Creditors,	7,967 43	
Sundry implements,	563 00			34,090 16
Interest acc't,	255 65			
Expenditures,	734 17			
Sundry expenses,	190 10			
Charcoal acc't, .	446 75			
Limestone acc't,	304 27			
Bills receivable,	1,000 00			
Foundry M. & B. shop,	110 60			
Farm acc't,	115 99			
Debtors,	2,359 58			
	$73,146 46			73,146 46

HENRY RICHTER,
Secretary.

(Statement of debtors and creditors, next page.)

Page 34 of Record Book.

Statement of acct. of Debtors and Creditors, August 31, '58.

Dr.		Cr.	
August Shultz,	$134 28	Chs. Hauser,	703 48
Bank of the city of Lacrosse,	124 00	H. Richter,	1,061 92
M. Held,	9 40	G. M. Wetzel,	518 99
Henry Minges,	105 00	John C. Fuhr,	1,320 39
R. Hilgard,	166 00	John Levis,	752 20
J. Haas,	165 00	John H. Randles,	61 62
E. Schlicht,	40 00	H. D. Parsons,	5 59
Lamp. Schmied,	64 00	Jos. Johnson,	322 68
C. W. G. Jœms,	368 00	Douglas & Chaffey,	156 00
Jac. Spaulding,	20 10	Joseph Adam,	1 50
Jos. Deggendorf,	125 00	Jacob Koehler,	1,512 52
H. Ohde,	43 45	Th. Metzger,	92 12
John Pollack,	9 96	H. & J. Pfiffner,	173 31
John Perry,	350 62	Loveny Schwab,	173 00
Newhoff & Bamberger,	1 75	John Lusler,	160 50
E. Park,	14 59	Fr. Gluck,	100 00
G. Gansler,	5 85	C. Bircher,	25 00
Chr. Josten,	61 50	John M. Levy,	42 50
Prop. of Jackson C. Banner,	50 00	G. Sharpf,	25 00
Tom. S. Pearce,	486 72	A. Pfoffner,	79 10
Verhineau,	11 00	Ledyard & Co.,	36 06
F. Muller,	1 75	C. W. Schmidt,	2 50
H. Curts,	80	J. B. Jungen,	51 77
Wm. Luke,	81	J. Berg,	328 55
		D. Nettleton,	6 20
		Trudell & Co.,	6 50
		Prickett,	7 25
		Jos. Wilson,	1 25
		Pat. Rowe,	11 35
		Muhleis,	35 50
		Cordes & Co.,	165 10
		M. Duckat & Co.,	27 98
	$2,359 58		$7,967 43

HENRY RICHTER,
Sec.

Exhibit C.

By-laws of the Black River Falls Iron Co., as originally made, and afterwards amended by the stockholders, at their general meetings, held on the 5th, 6th, and 7th of May, 1857, and 18th and 19th of May, 1858.

Administration.

1. The seat of the administration is at New Danemora, Jackson county, Wisconsin.

2. At the annual general meeting of the stockholders, five directors are to be elected from the number of stockholders, viz., one president, one treasurer, and three trustees, who shall have the chief management of the entire business of the company, and the care and superintendence of the property of the same, and who continue in office until the new board is elected.

3. One secretary is to be elected by such board of directors; he shall have no vote in the board.

4. The treasurer has to give security to the amount of fifty thousand dollars, to be approved by the board of directors, for the faithful discharge of his duties.

5. The board of directors elect a managing director, who shall superintend and manage the works, and who shall have the power, after previous consultation with the board of directors, to employ, at his own responsibility, the necessary workmen and hands.

6. The board shall have the power to appoint agents.

7. The three trustees shall meet at least twice a year, at the place of the iron works, to examine the books and the management of the works, and enter in short the result of such examination in the record book of the company, and to sign the same, and to lay before the stockholders in general, a statement of the assets and liabilities of the company.

8. The members of the board of directors have the right, in case they are prevented to appear in person, to appear by proxy, chosen from the stockholders.

9. The board of directors shall have the power, if the condition of the affairs of the company warrants it, and the interests of the company makes it necessary, to call an extra general meeting, giving at the same time their reason for doing so. The stockholders are to be formally invited to attend; those of them who reside in Germany, by giving notice to their attorney in fact, if there is not sufficient time to invite them personally.

10. The board shall keep books (besides those preseribed by the charter), which, in monthly balances, shall give a full statement of the assets and liabilities of the company; such statement shall be entered in the record book of the company, and be signed by all the members of the board.

11. All documents, orders for the payment of money, and receipts, must, in order to be valid, be signed by the president and the secretary.

12. The board shall make every year a complete inventory, and a complete computation of the expenses for the next financial year,

and lay the same before the board for examination and passing resolutions upon.

13. The board may, if they see fit, use the reserve fund in cases not provided for, and in such of urgent necessity.

General Meetings.

14. On the first Tuesday in the month of June in every year, a general meeting of the stockholders shall be held at the place of the iron works, and, when constituted, any member of stockholders present, shall represent the whole number of the same. Two months previous to the time of the general meeting, the secretary of the company shall serve an invitation on the stockholders.

15. The resolutions passed at the general meeting shall be binding on all absent stockholders.

16. The stockholders are, according to the number of the shares they hold, entitled to vote either in person or by their attorney. A power of attorney for such purposes, however, cannot be given but to one of the stockholders.

17. Absolute majority decides in all cases of voting. In case of a tie the vote of the president decides. The election of the directors shall be by ballot.

Rules.

18. At all regular general meetings, after the examination of the powers of attorney, and after the meeting has been constituted, the business shall be transacted in the following order.

a. A written report of the board of the condition of the affairs of the company in general, and of the results effected during the year last preceding, together with an inventory of the assets of the company.

b. Election of a committee of three to examine the balances in the books of the company.

c. Consultation and resolutions on the motions of the board, and of the stockholders.

d. Consultations and resolutions whether part of the net profits, and if so, what part be paid to the respective stockholders as a dividend; provided, however, that at least ten per cent. of the stock capital are retained as a reserve fund; but such retention shall cease as soon as the reserve fund reaches an amount equal to 25 per cent. of the stock capital.

e. Consultations and resolutions concerning the budget of expenses of the company.

f. Election of the directors. Settlement of differences.

19. Differences between the stockholders and the company shall be settled by two arbitrators, to be elected by the parties, without

allowing an appeal from the decision of the same. In case the arbitrators cannot agree in general, nor on the election of an umpire, such umpire shall, at their request, be elected by the county judge of Jackson county.

20. If a party, living in America, shall fail to elect an arbitrator within thirty days, and a party living in Germany, within sixty days after having been required to do so, such election shall be effected in the same manner as that of the umpire.

Reserve Fund.

21. Of the profits of the company ten per cent. shall, every year, be retained as a reserve fund. Such reservation, however, shall cease as soon as such reserve fund reaches an amount equal to 25 per cent. of the stock capital.

Indivisibility of the Shares.

22. Shares of the stock of said company cannot be divided; neither by purchase and sale, nor by inheritance, nor in any other way. If, on the death of the holder, a change of ownership occurs, and the heirs cannot agree on the distribution of the share or shares, the oldest of the heirs shall be considered a member of the company for the whole amount of the share or shares of the deceased.

Amendments of the By-Laws.

23. Amendments of the by-laws may be made at a general meeting by a vote of a majority of two-thirds of the stockholders; provided, such amendment is proposed by stockholders representing 15 votes.

If requested by 15 stockholders, in writing, the board of directors is obliged to call, within two months from the time of such request, an extra general meeting, governed, however, by the same regulations that are prescribed for calling a regular general meeting.

This is the Exhibit referred to in Henry Richter's deposition as "Exhibit C."

CYRUS K. LORD,
Commissioner United States District Court for the District of Wisconsin.

And now, at this same term, to wit, October term, 1860, and on the sixteenth day thereof, to wit, on the fifth day of November, A.D. 1860, the following proceedings were had, to wit:

Decree.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER,
v.
BLACK RIVER FALLS IRON COMPANY, WILLIAM M. HUBBY, F. KARCHER, C. RITTER, H. JANISCH, F. HAUSER, K. SEEL, FR. MUELLER, F. L. KOENIG, S. SCHUMACHER, G. VOGT, J. W. JACOB, and JULIUS W. HAAS. } In Equity.

This day came the parties, by their counsel, and on consideration of the pleadings, proofs, and arguments of counsel, it is ordered, adjudged, and decreed by the court, that this bill be and hereby is dismissed, but without prejudice. And it is further ordered, adjudged, and decreed by the court, that the complainants pay the costs to be taxed, and in default thereof, that an execution be issued against them for the same.

A. G. MILLER.

(Indorsed): Decree signed, recorded, and enrolled, November 4th, A.D. 1860, J. M. Miller, clerk.

And afterwards, to wit, on the tenth day of November, A.D. 1860, the following proceedings were had, to wit:

Appeal.

This day came the complainants, by their counsel, and filed their application for an appeal to the Supreme Court of the United States, as follows:

The United States of America, District of Wisconsin.

U. S. Dist. Court. In Equity.

JACOB KOEHLER, DANIEL KOEHLER, and HENRY PFIFFNER, complainants,
v.
BLACK RIVER FALLS IRON COMPANY, FREDERICK KARCHER, C. RITTER, H. JANISCH, F. HAUSER, K. SEEL, FREDERICK MUELLER, F. L. KOENIG, S. SCHUMACHER, G. VOGT, J. W. JACOB, JULIUS W. HAAS, and WILLIAM M. HUBBY, defendants.

And now come the complainants in said cause, and pray an appeal from the decision and decree of this court, in said cause, to the Supreme Court of the United States.

GEORGE W. LAKIN,
Solicitor for Complainants.

Dated November 10th, 1860.

Appeal allowed and Order for Costs.

Thereupon it is ordered by the court, that the said appeal be and hereby is allowed, and that the complainants give a bond with sureties, in the penalty of five hundred dollars, conditioned to prosecute said appeal to effect, and pay all damages and costs, if they shall fail to make good their plea or appeal.

And afterwards, to wit, on the 21st day of November, A.D. 1860, the following proceedings were had, to wit:

This day came the complainants, and filed their appeal bond, with Conrad Gents and Joseph Hilby, as sureties.

Which bond is as follows:

Appeal Bond.

Know all men by these presents, that we, Jacob Koehler, Henry Pfiffner, and Daniel Koehler, of Galena, in the county of Jo Daviess, and State of Wisconsin, as principals, and Conrad Gents and Joseph Hilby, of the county of Grant, Wisconsin, as sureties, are held and firmly bound unto Black River Falls Iron Company, Frederick Karcher, C. Ritter, H. Janisch, F. Haeuser, K. Seel, Frederick Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob, Julius W. Hass, and William M. Hubby, in the full and just sum of eight hundred dollars, to be paid to the said Black River Falls Iron Company, Frederick Karcher, C. Ritter, H. Janisch, F. Haeuser, K. Seel, Frederick Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob, Julius W. Hass, and William M. Hubby, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 14th day of November, in the year of our Lord one thousand eight hundred and sixty.

Whereas, lately, at a term of the District Court of the United States for the District of Wisconsin, in a suit pending in said court, on the equity side thereof, between Jacob Koehler, Daniel Koehler, and Henry Pfiffner, complainants, and Black River Falls Iron Company, Frederick Karcher, C. Ritter, H. Janeisch, F. Haeuser, K. Seel, Frederick Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W. Jacob, Julius W. Hass, and William M. Hubby, defendants, a decree was rendered against the said Jacob Koehler, Daniel Koehler, and Henry Pfiffner, and the said Jacob Koehler, Daniel Koehler, and Henry Pfiffner, having obtained and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said Black River Falls Iron Company, Frederick Karcher, C. Ritter, H. Jaenisch, F. Haueser, K. Seel, Frederick Mueller, F. L. Koenig, S. Schumacher, G. Vogt, J. W.

Jacob, Julius W. Haas, and William M. Hubby, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Jacob Koehler, Daniel Koehler, and Henry Pfiffner, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

JACOB KOEHLER. [SEAL.]
HENRY PFIFFNER. [SEAL.]
DANIEL KOEHLER. [SEAL.]
CONRAD GENTZ. [SEAL.]
JOSEPH HILBY. [SEAL.]

Sealed and delivered in the presence of
JOHN O'SULLIVAN.

State of Wisconsin, County of Grant, *ss.*

Conrad Gents and Joseph Hilby, who signed the above bond as sureties, being duly sworn, on oath says, that they are respectively, each worth the sum of one thousand dollars over and above all legal offsets, or incumbrances, and the exemption laws of this State.

Taken and subscribed before me, this 16th day of November, A.D. 1860.

JOHN O'SULLIVAN,
Justice of the Peace, Grant Co., Wis.

Indorsed: Nov. 21st, 1860. Bond approved. A. G. Miller, judge.

Order for Citation.

Whereupon, it is ordered by the judge, that the said bond and sureties be and hereby are approved, and that proceedings be stayed, and a citation be issued.

United States of America, District of Wisconsin, *ss.*

I, John M. Miller, clerk of the District Court of the United States of America for the District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said District of Wisconsin, this twenty-seventh day [SEAL.] of December, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fifth.

JNO. M. MILLER,
Clerk.

United States of America.

To the Black River Falls Iron Company, William M. Hubby, F. Karcher, C. Ritter, H. Janisch, F. Hauser, K. Seel, Fr. Mueller, F. L. Koenig, S. Schuhmacher, G. Vogt, J. W. Jacob, and Julius W. Haas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to an appeal filed in the clerk's office of the District Court of the United States, for the District of Wisconsin, wherein Jacob Koehler, Daniel Koehler, and Henry Pfiffner, are appellants, and you are appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fifth.

A. G. MILLER,
Judge of the District Court of the U. S.
for the District of Wisconsin.

Served on the within named appellees, by delivering a copy of this citation personally to L. G. Hooker, one of the appellee's attorneys, this 26th day of November, 1860.

J. H. LEWIS,
Marshal.
By F. HENRY,
Dep.

Service,	$2 00
Travel, .	6
Copy, .	20
	$2 26

Indorsed: Chan. K. Page 300. Jacob Koehler, Daniel Koehler, and Henry Pfiffner, Appellants, *v.* Black River Falls Iron Company, et al., appellee. Citation. Filed Nov. 30th, 1860.

1593

1373

Supreme Court of the United States.

DECEMBER TERM, 1862.—No. 115.

JACOB KOEHLER, DANIEL KOEHLER, AND HENRY PFIFFNER, APPELLANTS,

vs.

THE BLACK RIVER FALLS IRON COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR WISCONSIN.

BRIEF FOR APPELLANTS.

The Case upon the Pleadings.

The appellants filed their bill against the Black River Falls Iron Company as sole defendant, praying the foreclosure of a certain mortgage for $15,000, alleged to have been executed by the said Company on the 13th of August, 1858, in favor of Daniel Koehler, one of the complainants, and one Caspar Bircher, and which afterwards, and before the filing of the bill, became by assignment the property of the complainants. The mortgage and note endorsed, as to his interest, by Bircher to Daniel Koehler and Henry Pfiffner, two of the complainants, are at *p.* 25 *et. seq.* of the Record. The bill also prayed for general relief.

Afterwards, Karcher and others, claiming under a subsequent mortgage, dated 4th March, 1859, prayed to be made defendants; and it was ordered accordingly. (*Rec., p.* 8.) And HUBBY, claiming to be a stockholder, having alleged by petition that the directors of the Company were "not intending to make defence to the bill," was in like manner

made defendant, with leave to defend, "as the said Company defendant could do." (*Id. pag.*)

The bill was amended, (p. 23,) and answers were filed by Hubby (p. 12) and by Karcher, et al., (p. 17.) And simultaneously with the filing of Hubby's answer, was filed an answer in the name of the Company, but not under its corporate seal, nor signed or verified by any officer; which is supposed to be the act of Hubby, under the leave above mentioned.

Neither of the answers is sworn to.

General replications were entered, (p. 20, et seq.,) and testimony taken on both sides.

The decree (p. 62) was that the bill be dismissed, "but without prejudice," and for costs against the complainants. The appeal is from this decree.

HUBBY, in his answer, first denies, on information and belief, everything in the bill, including the execution of the note and mortgage; and then proceeds to aver that the note and mortgage were in fact executed by the Directors, but by fraud and collusion, without consideration and without authority.

In the formal answer put in by him in the name of the Company, he says substantially the same.

The real defendants, Karcher & Co., (the subsequent mortgagees,) make the same general denials, "on information and belief." But they distinctly admit the *factum* of the sealed note and mortgage, and the *delivery* of the same *by the Directors, at paragraph* 3, *p.* 19, where they say that the note and mortgage "were obtained by fraud and collusion," and that "the said Directors, fraudulently and collusively, and without any authority of law, *delivered* the said pretended note and mortgage to the said D. K. and C. B. for the purpose of creating an apparent incumbrance upon the property," &c., and for the purpose of cheating, hindering, delaying, and defrauding the creditors of the Company.

They also admit (p. 17–18) that they had information and belief that on or about August 13, 1858, (the date of complainant's mortgage,) "*two instruments of writing, purporting to be the note and mortgage of the said B. R. F. Iron Company, and purporting to secure to the said Daniel Kochler and Caspar Bircher the payment to them of the sum of* $15,000, *and interest at the rate of* 12 *per cent. per annum, &c., &c., came into the possession of the said D. K. and C. B., and which are the same note and mortgage*," *&c., &c.* They then set up their own mortgage as of March 4, 1859, and conclude with the same charge of

fraud and collusion by the Directors in the execution and delivery of the complainant's mortgage.

These answers not under oath, are mere pleadings. *Union Bank vs. Geary*, 5 *Pet.*, 111. *See, also*, 6 *Paige*, 58

Evidence.

The evidence for the complainants, which was read without objection, (p. 24, foot,) will be found at page 25, et seq., to wit:

1. The note and endorsement; the mortgage under seal of the Company, signed by the President and Secretary, with two subscribing witnesses; the certificate of acknowlegement; the assignment of Bircher, endorsed on the mortgage; the certificate of registry of deed, on the 14th August, 1858, also endorsed, and of registry of assignment, January 29, 1859.

2. The deposition of J. M. Levy, (p. 31,) a director, and acting secretary, of the Company at the date of the note and mortgage, who proves the meeting of the Directors on the 13th August, 1858, the settlement with Koehler & Bircher, the passing of an order or resolution directing the mortgage, and that the mortgage was made in pursuance of the resolution. He states that all the Directors were present. He identifies the mortgage and note produced by the complainant, and proves that they bear the genuine seal of the Company. He proves that they were executed "in good faith, under the direction of the Board of Directors, all present;" and that there was full consideration for the same.

3. The deposition of J. C. Fuhr, one of the Directors, to the same effect.

4. The act of incorporation, (p. 38.)

All this testimony having been read by the complainants without objection, the defendants offered to read certain depositions taken ex parte under the judiciary act of 1789; to the reading of which the complainants objected, and moved the court to suppress the same, so far as they relate to the *factum* of the mortgage, "or any change or alteration in the same, by affixing the corporate seal or otherwise." (*See objection and motion, at p.* 24.) And upon this the first question arises.

I.

The Factum of the Mortgage.

We have seen that the answers admitted that the mortgage was executed and delivered by the directors, in point

of fact. It is true that certain general denials were coupled with this admission. But the effect of the whole is *confession and avoidance.* Whether the defendants might, notwithstanding, have required the complainants to make more complete and regular proof of the execution and delivery of the mortgage, it is not necessary now to inquire. In the exercise of their right to manage their own case, and doubtless for good reasons, they chose to waive that proof. This plainly appears *at . p*24 (*foot*) *et seq.* The mortgage an exhibit with the bill, was read in evidence without objection. Being *an exhibit*, if objection had been made, it could have been proven at the hearing *viva voce.* There were *two subscribing witnesses.* One of them had become interested by assignment, and was a complainant, (Koehler.) The other (Shillock,) was the attorney at law of the Company, as appears by the defendants' evidence at p. 56. He was also a subscribing witness to the defendants' mortgage, and in his character of Notary Public had taken the acknowledgment of the complainant's mortgage. (*Rec. pp.* 27, 42, 53.)

The answers had not distinctly and frankly stated the defence, as it afterwards appeared, to wit: that *although the attesting clauses witnessed that the seal of the Company was affixed, and the witnesses attested, by their signatures, the signing, sealing, and delivery, and the certificate of acknowledgement was in the regular form for a deed to be admitted to record, and such recordation appeared by the official endorsement of the Register*, yet that, in point of fact, the seal of the Company was not attached to the deed at the time of its delivery, but had been afterwards, at some time not indicated, affixed.

And this supposed matter of fact, not set up distinctly in the answer, and which is inconsistent with what is there admitted and charged respectively, the defendants attempted to prove, without calling the subscribing witnesses, or accounting for their absence.

The general rule of evidence is elementary. It was applied with great strictness by this Court in *Clarke vs. Courtney*, 5 *Pet.* 343. Then, upon the state of the pleadings and proofs in the case at bar, ought it to have been applied to the defendants, when they sought to disprove the execution of the deed, or to show that, after delivery, there had been an alteration made in the instrument by adding the corporate seal of the Company?

The reasoning upon which the rule stands would seem to apply whensoever the execution of the instrument is the issue, and on whichsoever side the burden of proof may have fallen, whether by the pleadings or the stipula-

tions or omissions of the parties in the conduct of the cause. In the present instance the mortgage deed was the foundation of the complainants' case, and was set up by and exhibited with the bill as part thereof. The mortgagor, (the B. R. F. Iron Company,) the sole original defendant, did not deny its execution and delivery as charged. In fact, no defence is pretended by the mortgagor. But *Karcher*, et al., claiming to be junior mortgagees, and *Hubby*, claiming to be the owner of three shares of the stock of the Company, cause themselves to be made defendants. They file no cross-bill. As has been said, they do not disclose the pretended defect in the omission of the seal of the Company. Their general denials are qualified and applied by the specific charge (p. 19, paragraph 3,) that the mortgage and note were obtained from *the Directors of the Company* "by *fraud and collusion* by, with, and on the part of, the said directors;" that the directors *delivered* the mortgage and note *without authority from the Company*, and *without authority of law*, and *without consideration*. The complainants, therefore, might well be misled by the issue thus tendered and limited, and which they accepted by their replication. They adduced full proof of the consideration, the authority, and the *bona fides* of the transaction, and, incidentally, of the execution of the note and mortgage, the witnesses being two of the directors, one of whom had attested the instrument as acting secretary. No objection whatever was taken to this proof. The defendants neither require the complainants to produce, nor do they themselves produce, the subscribing witnesses; but by this adroit management they seek to introduce remote and secondary evidence to contradict the attestation, and to throw doubt upon the question whether the seal was affixed before or after delivery, or before or after recordation. It is submitted that this is a mere attempt to evade a rule of evidence which is essential to the security of estates; and that the depositions, having been objected to on that specific ground, ought to have been rejected.

These depositions having been thus objected to at the hearing, it is submitted that it is competent on this appeal to notice other objections than those specified in the motion to suppress them, such new objections being apparent upon the face of the depositions, and being of such a nature that they could not be remedied if they had been specially pointed out.

This court has repeatedly declared that depositions so taken are to be regarded with no favor, and that the requisitions of the Statute, (Judiciary Act, sect. 30,) in form and

substance, must be strictly complied with, otherwise the depositions are inadmissible. *Walsh vs. Rogers*, 13 *How.*, 287. *Harris vs. Wall*, 7 *How.*, 693. *Bell vs. Morrison*, 1 *Pet.*, 355.)

In the present case the magistrate does not certify as a fact of which he had knowledge, or which was proven to his satisfaction, the cause of taking the depositions; nor that he retained them to be delivered with his own hand into court, nor that they were sealed up by him for transmission to the court; nor does it otherwise appear that the requisitions of the statute in this respect were observed.

But, *secondly*, this evidence, even if rightly received, was wholly inconclusive, and ought not to have been held sufficient to invalidate the deed.

1. *Bryan's deposition*, (*p.* 45,) *taken ex parte.*

He was the Register, and he "received this mortgage for record and recorded it myself." He testifies that his record-book does not show any scroll or representation of a seal. The instrument as produced and proven bears the genuine corporate seal of the Company. (Levy, p. 33, Furr, p. 36.) The question of fact, then, was, whether the witness, in making the recordation, had omitted to make a scroll under the attesting clause and opposite the name of the Company; or, on the other hand, whether the attestation by the witnesses was false, and the seal afterwards affixed. Upon this question, the fact that the deed was produced in evidence with the seal of this corporation aggregate attached, was *prima facie* evidence that it had been duly attached. *Lovett vs. Sawmill Co.*, 6 *Paige*, 58–60. *Angel and Ames on Corp.*, 192–3.

Bryan speaks at first doubtingly: "It is my impression, and I feel pretty confident, &c., &c." "I remember there was an impression on my mind that there was something wrong about the mortgage, and that I wrote to a lawyer at Milwaukie," &c. And finally he comes to what he regards as the controlling fact, viz., that his record omits the scroll or representation of the seal.

The interrogation which led to this testimony does not appear; and the deposition being taken *ex parte* and without notice, there was, of course, no cross-examination.

2. *The deposition of Richter, taken ex parte at the same time and place*, (*p.* 46.)

He was Secretary of the Company at the time of the mortgage; and was at New Danamorra, where the office was.

He ceased to be Secretary a few weeks afterwards. He says the meetings in August and September, 1858, were held at La Crosse: that there were two seals, only one of which was used; that both were in the office at Danamorra "on the 13th day of August, 1858," (the date of the mortgage,) and that he never was applied to for either of them. He says he has no knowledge of either of them being affixed to the mortgage. "All the knowledge I have of a mortgage purporting to have been executed by the B. R. F. I. Co. to Daniel Koehler and Caspar Bircher, on the 13th day of August, 1858, is derived from hearsay, *and from the records of the Company.*" That the record book of the Company was before him appears from his testimony; but he is not asked to read that part of it, or in whose handwriting it is, or when it was written. But he is required to read a subsequent entry of *Sepiember* 6, 1858, as follows: "Upon this, Mr. E. Hauser made the motion to *cancel if possible, the real estate mortgage in the hands of Galena men,*" (p. 47;) which is afterwards at p. 49, explained to mean *this* mortgage. It may safely be inferred, that the record duly showed the execution of this mortgage, which it was thus decided to "cancel if possible;" otherwise it would have been set out with the other extracts in the evidence.

This testimony is altogether of a negative character, and is quite consistent with the delivery of the instrument duly sealed; which is the *prima facie* case.

3. *The testimony of Hauser, taken in like manner,(p.* 48.)

He was the President of the Company; proves the resolution of 13th August, 1858, directing the execution of the note and mortgage, and that the same were "drawn up in conformity with such resolution." He says: "the seal of the Company was *not at that time* affixed to the mortgage. *I delivered the note and mortgage after they were so signed to Jacob Koehler, for Caspar Bircher and Daniel Koehler;* at the time of *this* delivery, *neither seal of the Company was affixed to the mortgage.*" He further says the seals were at Danamorra, that *he left them there;* and he does not know, and does not believe that either seal *ever was affixed.* It will be remembered that the mortgage was not before him; and it seems certain he had never seen it, and could not know what become of it, after it was signed and handed to one of the Directors, (Jacob Koehler,) *to be thereafter delivered* to the mortgagees. This was no delivery of the deed; but the Director who so received it for delivery, had a clear right to direct the seal to

be put to it, or to affix it himself; the act being in pursuance of the recorded authority of the Company, and being still incomplete until delivery. The mortgagee not being a natural person, could only act by an agent; and one of the Directors was competent, under such authority, to act for it. *Angel & Ames, ubi supra.*

4. *Deposition of Levy, taken in like manner,* (*p.* 50.)

After proving the meeting of the Directors on the 13th August, 1858, that he acted as Secretary *pro tem.*, and that "the transactions of the meeting are in (his) handwriting on page 31 and 32 of the records of the said Company;" and that the note and mortgage were drawn up in conformity with the resolution directing it. He says: (*speaking of that meeting,*) "cannot say whether the seal of the Company was affixed to the mortgage. Upon reflection, I know we did not have the seal of the Company *there*, and that it was not affixed to the mortgage." He says he never saw the mortgage afterwards.

All that these witnesses prove, is quite consistent with the sealing of the instrument before delivery. Upon negative testimony like this, any deed of a corporation with officers and directors, might be impeached. And in a case where there is no pretence of substantial equity for the defendants, and where the complainants are claiming only that which was plainly intended, and is founded in the valuable and full consideration appearing upon the evidence here, it is supposed that such depositions ought to be weighed with scrupulous exactness, taking nothing for granted in their favor.

II.

That the case of the defendants is wholly without equity, seems clear.

For, first, they nowhere venture the assertion that they took their mortgage without notice of the complainants' prior lien.

Secondly, such notice, or knowledge, is plainly to be inferred from the answers and the evidence.

They knew of the transaction, and relied upon the supposed defect in regard to the seal, to invalidate the instrument as a deed. But it was a good equitable mortgage; and knowledge of its existence subjected them to its priority, whatever its defect of form might turn out to be.

Thirdly, their attempt to impeach the *bona fides* of the

debt to the complainants, or the act of the directors, either on the ground of collusion or want of authority, has entirely failed. The mortgage is beyond question in these respects.

Fourthly, they advanced or paid nothing, and surrendered nothing, in taking their junior mortgage. It was for a pre-existing debt, (p. 49,) for which they were seeking such security as the Company could give. They were not, and do not pretend to have been, deceived in respect of the equitable mortgage (if it were nothing more) then charged upon the lands.

III.

The suit having been originally against the alleged mortgagor, the prayer for general relief, as against these parties admitted subsequently and not claiming to be *bona fide* purchasers without notice of the equitable mortgage, was sufficient to entitle the complainants to a decree establishing their lien. It could operate no surprise upon the defendants. It was strictly germaine to the special case; the one being of a perfect and the other an imperfect, or equitable, mortgage to secure the same debt. See *Baldwin vs. Ely*, 9 *How.*, 598, for a strong instance of relief under the general prayer.

For these reasons it is submitted that the decree should be reversed.

J. M. CARLISLE,
Of Counsel for Appellants.

Supreme Court

OF THE

UNITED STATES,

No. 115.

THE BLACK RIVER FALLS IRON COMPANY,
WILLIAM M. HUBBY, et al.

Respondents,

ads.

JACOB KOEHLER,
DANIEL KOEHLER, and
HENRY PFIFFNER,

Appellants.

WM. P. LYNDE,

Solicitor for Respondents.

1607

SUPREME COURT

OF

THE UNITED STATES.

NO. 115 OF DECEMBER TERM, 1862.

THE BLACK RIVER FALLS IRON COMPANY,
WILLIAM M. HUBBY, and others,
Respondents,

vs.

JACOB KOEHLER,
DANIEL KOEHLER, and
HENRY PFIFFNER,
Appellants.

This suit was brought to foreclose a mortgage purporting to have been given by the Black River Falls Iron Company. The complaint alleges,

First. That on the 13th day of August the company made their promisory note for $15,000 to Daniel Koehler and Casper

Biecher, and at the same time executed under its corporate seal and deliverd to them the mortgage set out in the bill of complaint, and that said mortgage was recorded in Jackson County, August 14th, 1858.

Second. That on the 21st day of September, 1858, Bircher, in consideration of $7,000, assigned his interest therein to Jacob Koehler and Henry Pfiffner.

Third, That the whole amount of the note and mortgage was due.

The defendants answered seperately. All the defendants deny,

First. The making, execution and recording of the mortgage, as alleged.

Second. Ignore the assignment by Bircher.

Third. Deny that the company, defendant, was at the date of said pretended mortgage indebted to said Daniel Koehler and Casper Bircher, and insist that said note and mortgage were without consideration, that complainants had notice thereof, and deny that any sum whatever was due thereon.

Fourth. The defendants, F. Karcher and others, further answer, that they are mortgagees of said Black River Falls Iron Company to over $12,000, their mortgage covering the same premises as the complainant's pretended mortgage, and is dated March 4th, 1859, and alleges that complainants pretended mortgage was procured by fraud and collusion of the directors of said company, and with a view to cheat and defraud said company defendant and its creditors, and that it was given for the benefit of said directors. Replications were filed.

On the hearing, a note and mortgage corresponding to those set out in complaint were produced by the complainants, with the corporate seal attached to each; also, the assignment as set out in the bill of complaint.

On the part of the defendants, it is shown that said corporate seal was never affixed by the company to either of said papers. That it was not affixed at the time of making the same, nor before de-

livery or record, and no proof is adduced to show when or how it became affixed to said papers.

The defendants therefore insist that it was surreptitiously placed there; that said mortgage was never properly executed, and that it is not the deed of said company. And it is not a valid or legal mortgage of the premises therein described.

The Revised Statutes of Wisconsin, of 1849, were then in force, and section 1 of chapter 59 prescribes the manner in which conveyances of real estate could be made, and is in the words following:

"Conveyances of lands, or of any estate or interest therein, "may be made by deed, signed and sealed by the person from "whom the estate or interest is intended to pass, being of lawful "age, or by his lawful agent or attorney, and acknowledged or "proved or recorded as directed in this chapter, without any other "ceremony whatever."

Section 30 of this same chapter defines what is meant by conveyances as thus used, and is as follows:

"The term conveyance, as used in this chaper, shall be con- "strued to embrace every instrument in writing, by which any "estate or interest in real estate is created, aliened, mortgaged, "or assigned, or by which the title to any real estate may be "affected in law or equity, except wills, leases for a term not ex- "ceeding three years, and executory contracts for the sale or "purchase of lands."

The paper in question, therefore, not having been sealed by the "Black River Falls Iron Company," was not executed in accordance with law, so as to entitle it to be treated as a mortgage—and if not a mortgage, it matters not what force and effect might have been given to it in a proper proceeding to enforce it, for it is here set out as a mortgage duly executed, and the only relief demanded is that proper on a mortgage so executed. The facts as they appeared on the hearing were not stated in the complaint, and there was no request at that time or any other to amend the complaints to correspond to the facts. Hence, the proofs show

that this mortgage mentioned in the bill of complaint was not executed or recorded as alleged, and those issues were found for the defendants and the bill was thereupon dismissed, but without prejudice.

The presence of a seal on an instrument is presumptive or *prima facie* evidence only—not conclusive—that it was regularly affixed thereto, by the party making the instrument, and this presumption may be rebutted by parol evidence. The President, &c., of Berks and Dauphin Turnpike Co. vs. Myers, 6 Sergeant and R. 16. St. Mary's Church, 7 Sergeant and R. 530. See, also, case of Davidson vs. Cooper, cited below.

The deed is invalid if the seal is affixed without authority or by a stranger. 12 Modern 423. Rex vs. The Inhabitants of Haughley, 4 B. and Ad. 650

II.

The surreptitious affixing of the corporate seal after said paper had been delivered, accepted and recorded, was a material alteration of the instrument, which rendered it void for all purposes, and no relief whatever could be granted upon it.

The evidence is conclusive that the seal was not affixed before delivery. Two days subsequently it was recorded and a certified copy of the record which was in evidence shows that there was no seal at that time, and the President and Secretary, who had the custody of the seal, testify that it never was affixed by them, and that they have no knowledge as to how it became affixed.

The complainants proved that it was the genuine seal of the company, but made no effort to explain how it became affixed to the instrument in question. Hence, we may conclude that the

complainants, or these interested with them caused said seal to be affixed, but under what circumstances or by what authority we are not informed. The affixing of the seal entirely changes the character of the instrument. It is therefore a material alteration of a written instrument, and made by the party holding the same, and such alteration vitiates the instrument and renders it void for all purposes.

Davidson *vs* Cooper, 11 Meeson & Welly 778.
13 " " 343.

III.

The said pretended mortgage—admitting it to have been legally executed—was unauthorized, without consideration, and fraudulent as to creditors.

The defendants, Karcher and others, were creditors of the Black River Falls Iron Company, and mortgagees of these premises, and however it might be with the company, as to some of these objections, there can be no doubt that they can insist upon them against the enforcement of this mortgage.

First. Was the mortgage authorized? By the charter of the company it was authorized to mortgage its property. See page 38 of printed case.

The second section of the charter provides for the election of a board of directors, "who shall take charge of the operations of "the company, subject to such rules, regulations and by-laws as "may be adopted by the stockholders." Hence the stockholders had the right to circumscribe the powers of the directors.

On pages 46 and 47 we find that the stockholders at their annual meeting, May 19th, 1858, authorized the directors to effect a loan nad mortgage, the property of the company to secure its payment.

This action was equivalent to directing a mortgage for a specific purpose. It did not authorize said directors to mortgage the property to themselves or for their benefit, to secure actual or pretended pre-existing debts. It may well be questioned whether a mortgage made by the directors of a corporation, in the name of a corporation, to themselves, would be sustained under any circumstances; that it would be closely scrutinized all must admit. And as this mortgage was so given, and almost exclusively for pretended pre-existing debts, we submit that it was not authorized by the charter and the action taken by the stockholders, but was in contravention of both. And at the next meeting of the stockholders they expressly repudiate the pretended mortgage in question. (See page 49 printed case.) Therefore we submit that said pretended mortgage was unauthorized.

Second. But admitting the power to make it, there was not adequate consideration for it.

The mortgage purports to be for $15,000; was given to one of the complainants, and to one Casper Bircher. The pretended consideration was that the mortgagees should advance the company $1200 in cash, $800 in provisions, and pay the following debts of this company:

Note to Metzer, Koehler & Schwab,	$3.570
Debt to John C. Fuhr,	1.900
Debt to Jacob Koehler,	1.256
Two notes to John M. Levy,	2.404

These sums, together with the amount to be advanced in money and provisions, make the sum of $10,230 as the whole consideration for which said pretended mortgage of $15,000 was given. (See printed case, page 49 and 56.)

No part of this consideration was paid at the time of making the note and pretended mortgage. There is some evidence that the $1,200 in money and $800 in provisions were afterwards received, but not a particle of proof that either of the four pretended debts above named were ever paid or cancelled by the mortgagees or their assigns. The consideration of the mortgage was

directly in issue by the pleadings, and it was incumbent on the complainants to have shown the payment or cancellation of each of those debts. We therefore submit, waiving all objection as to the defective execution of the pretended mortgage, that the complainants could in no court equitably claim to exceed $2,000, the amount of their advances under this agreement, but deny that they could recover this amount even, under their bill as framed in this case.

This bill was thereupon dismissed without prejudice, so that they could, if so advised, take future proceedings to enforce a lien for the amount of such advances on a bill properly framed for that purpose.

Third. We claim that this pretended mortgage was given by collusion on the part of the directors, and that it is fraudulent and void, as against creditors of the company. Casper Bircher one of the mortgagees, never had any interest in the mortgage; he was a mere nominal party. The mortgage was made in his name for the benefit of the directors, who were the holders of the indebtedness intended to be secured. The mortgage was, therefore, made for the benefit of the directors, and with a view of giving them an advantage over the other creditors of the company, which was inequitable and was procured by collusion among said directors.

2. The total amount of advances made, together with the debts to be paid, for which said pretended mortgage was given, amounted to only $10,330—yet the mortgage was given for $15,000, with interest at twelve per cent. thereon, made payable nine months from date. The bill of complaint alleges, that the whole $15,000 with interest at twelve per cent. is due, and seeks a foreclosure for the full amount.

These facts are conclusive evidence of a fraudulent intent, both in the giving and taking said pretended mortgage; and such a mortgage, made payable within the short space of nine months, is also strong evidence that it was the intention and design in giving and taking the same, to secure by a foreclosure the whole property of said company, and thus defraud all other creditors.

IV.

The complainants, Jacob Kœhler and Henry Pfiffner, are chargeable with full notice of all equities against said note and mortgage as fully as were said Koehler and Casper Bircher.

1st. Jacob Koehler was one of the directors of the company, engaged in procuring the mortgage to be given; was one of the subscribing witnesses; received the mortgage from the company, and carried it to be recorded, and wss one of the pretended creditors for whose benefit it was made.

2d. The transfer from Bircher was by a joint assignment to Jacob Koehler and Henry Pfiffner.

3d. The pretended note of the company, to secure which this pretended mortgage was given, was payable to the order of Daniel Koehler and Casper Bircher, and was made by the company and delivered by them without seal, and it was so set out in the bill of complaint, but the note produced at the hearing was a sealed instrument. This alteration of the note was fully established by the proofs, and it entirely vitiated the note for all purposes, and it was not properly admissible in evidence under the pleadings. Regarding it as a sealed note made by the company, the holders of it are not entitled to be regarded as the bona fide holders of negotiable paper. Covell vs. Tradesman's Bank, 1 Paige, 131.

Again, Jacob Koehler and Henry Pfiffner are not endorsees of Casper Bircher—they do not take as endorses but as assignees. A negotiable promissory note payable to the order of the payee, cannot be transferred so that the holders will take it free and discharged of all equities as between the maker ond payee except by endorsement. Hedges vs. Sealey, 9 Barbour, 299; Vaherlien vs. Howell, 5 Sneed, Tenn., 441. Lackay vs. Curtis, 6 Iredell Eq. 299.

Therefore, there is no pretence for saying that Jacob Koehler and Henry Pfiffner are not chargeable with all equities as between the maker and payee of said note.

The decree of the District Court should therefore be affirmed.

WM. P. LYNDE,
Solicitor for Respondents.